

[illegible]

1. HANIFA NYAMAIZI

BEFORE: Hon. Justice Isah Serunkuma

The applicant brought this application under Article 139(1) of the Constitution, Section 14(1) of the Judicature Act, Section 98 of the Civil Procedure Act, Section 71, 167 & 168 of the Registration of Titles Act and Order 52 rule 1 & 2 of the Civil Procedure Rules. He sought a vesting order in respect to the land comprised in Folio 4, Plot 36, Kasigwa Road, Masindi.

The application is supported by an affidavit deposed by the applicant. He stated that he purchased the said land from the 1st respondent upon payment of the full purchase price. Thereafter, the applicant took possession of the land but has been unable to transfer the same into his name owing to the disappearance of the 1st respondent who did not sign the transfer forms.

Representation

At the hearing of the application, learned counsel Irene Twesiime of M/s Legal Aid Project of the Uganda Law Society represented the applicant. The respondents did not appear and neither were they represented. However, the 1st respondent was duly
5 served by way of substituted service, while the 2nd second respondent was personally served and acknowledged service but did not appear.

Applicants' submissions

Learned counsel for the applicant submitted that the applicant acquired the right to
10 own the suit property under Article 26 of the Constitution. She relied on the case of *John Katarikawe versus William Katweremu (1997) HCB 1877* for the proposition that a contract of sale of land is not perfect until an effective transfer has been concluded. Counsel submitted that upon purchase of land, the buyer acquires an equitable interest in the land which is turned into a legal and indefeasible interest upon effective
15 transfer of title.

She relied on the definition of a vesting order given by the **Osborne Concise Law Dictionary** which defines a vesting order as an order upon which property passes as effectually as it would under a conveyance. Counsel also relied on the case of *Telecom*
20 *Mast, Daniel Nkalubo Sebugwawo (Applicant) Miscellaneous Application No. 007 of 2014* where the court defined a vesting order as an order that passes legal title in lieu of a legal conveyance.

Learned counsel submitted that the applicant fulfilled the conditions for the grant of a
25 vesting order provided under section 167 of the Registration of Titles Act. She relied

on the case of ***Re Ivan Mutaka (1980) HCB 27*** for the conditions necessary to obtain a vesting order, namely; that there was a sale of land, the whole purchase price was paid, the purchaser is in possession of the land and transfer cannot be effected by reason of the death or disappearance of the transferee without effecting transfer of title. Counsel submitted that this court is vested with jurisdiction to grant a vesting order in cases of this nature. For this submission, counsel relied on the case of ***Aida Najjemba versus Ester Mpagi; Civil Appeal No. 0074 of 2005***. In the premises, counsel submitted that the application has merit and ought to be allowed with costs of the application awarded to the applicant.

Court's analysis

By this application, the applicant seeks a vesting order under section 167 of the Registration of Titles Act, Cap 230 which provides as follows;

“Section 167. Power of registrar to make a vesting order in cases of completed purchase.

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 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.”

It is clear from section 167 of the RTA above that the power to grant a vesting order is vested with the Registrar/ Commissioner for Land Registration and not the High Court. To suggest otherwise would be to defeat the clear intentions of the drafters. In *Mutyaba Tom versus James Kayimbye Sebinene Musajjalumbwa & Anor; HCMC No. 0040 of 2018, [2019] UGHCLD 14*, this Court while dealing with a similar application rightly held thus;

“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... It appears to me that 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.”

There is a plethora of authorities which maintain the above position and this court finds no reason to deviate. (See; *Nakubulwa Lwanga versus Muwanga Charles and Another; HCMC No. 0172 of 2019, 2021 UGHCLD 164 at page 4, Edward Babigumira*

versus Commissioner for Land Registration; HCMC No. 0076 of 2012, Ronald Oine versus Commissioner Land Registration; HCMC No. 0090 of 2013, and Namyenya Milly versus Commissioner of Land Registration; HCMC No. 0104 of 2015).

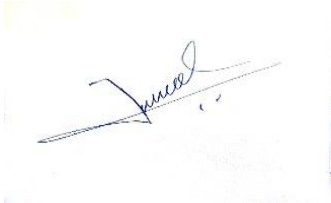
5 In the instant application, learned counsel for the applicant submitted that the applicant approached the Registrar for lands who referred him to this court and advised him to file this application. However, there is no evidence on record to support counsel's submission. Counsel's claim that the applicant first approached the Registrar to seek a vesting order was neither pleaded in the notice of motion as forming part of
10 the grounds upon which this application was brought, nor was it deposed by the applicant in his affidavit in support of the application.

Learned counsel sought to rely on the case of *Aida Najjemba versus Easter Mpagi; Civil Appeal No. 0074 of 2005* for the proposition that the court may still exercise its
15 inherent jurisdiction to grant a vesting order in cases of this nature, notwithstanding that the applicant did not first seek the same from the Registrar. I have considered the said authority and find it rather distinguishable from the instant application. In that case, there was ample evidence to show that the applicant had first sought the order from the Registrar. The court observed that the Commissioner for Land Registration
20 on 16th August 2004 wrote to counsel for the appellant suggesting to them the option of obtaining a vesting order from court. This implied that the Commissioner was disinterested in exercising his powers under section 167 of the Registration of Titles Act, thereby rendering the court's intervention necessary, unlike in the instant application where it was neither pleaded nor proved that the applicant first sought the
25 order from the Registrar.

In the premises, this application fails and is dismissed. I make no orders as to costs.

I so order.

5 Dated and delivered on this 31st day of August 2023.

A handwritten signature in blue ink, appearing to read 'Isah Serunkuma', is written over a faint, dotted horizontal line. The signature is stylized and cursive.

Isah Serunkuma

10 JUDGE