

**IN THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**(LAND DIVISION)**  
**MISC CAUSE NO. 324 OF 2023**

**IN RE KIREBU HAMIDU ::::::::::::::::::::::::::::::::::: APPLICANT**

**BEFORE; HON. LADY JUSTICE NALUZZE AISHA BATALA**

**RULING**

**Introduction;**

1. **Kiberu Hamid** hereinafter referred to as the applicant brought the application exparte under Section 167 of the Registration of Titles Act Cap 230, Section 33 of the Judicature Act Cap 13, Section 98 of the Civil Procedure Act and Order 52 of the Civil Procedure Rules for orders that;

- i) Land comprised in Kyadondo Block 208 Plot 2954 at Kawempe be vested in KIBERU HAMIDU LRV 4556 Folio 11 Block 13 Plot 1311 at Najjanankumbi.
- ii) The applicant shall meet the costs of the application.



### **Background.**

2. The applicant purchased land comprised in Kyadondo Block 208 Plot 2954 at Kawempe together with his uncle the Late Hajji Nasulu Nsubuga whose name was entered on the Certificate of title as Registered Proprietor of the said Land. The late Hajji Nasulu Nsubuga however sold part of the land and the residue was left registered in the names of the deceased.
3. At the time of Hajji Nasulu's death, he had not executed transfer forms in favor of the applicant who claims to have purchased the interest with the deceased person. The applicant is desirous of protecting his interest by having the land vested into him. It is against this background that the applicant brings this application.

### **Applicant's evidence.**

4. The application is supported by the affidavit deposed by the applicant **Kiberu Hamidu** which sets out the grounds of the application but briefly includes the following;
  - i) The applicant is the equitable owner of the suit land comprised in Kyadondo Block 208 Plot 2954 at Kawempe

having jointly bought land then comprised in Plot 2625 with the Late Hajji Nasulu Nsubuga.

- ii) That the applicant built on the residual plot both his permanent home where he lives with his family as well as several commercial rental houses.
- iii) That at the time of death of the applicant's uncle in 2008, he had handed over the duplicate certificate of title to the applicant which he kept but did not hand over signed transfer forms for the suit land to him.
- iv) That all clan members are aware and informed of the fact that the applicant had formerly jointly bought land with his late uncle.
- v) That the heir of the applicant's uncle is also aware that the said land was jointly bought by the applicant and his late father and that the rest of the beneficiaries have no interest in it.
- vi) That the applicant is desirous of protecting his land by having it vested into him.



- vii) That the applicant has been in possession thereof for over a period of 50 years now having brought the same in 1970s.

**Representation.**

5. The applicant was represented by mrs. Dorothy Nalwonge of M/S MSM Advocates. The applicant only filed his affidavit which I have considered in the determination of this application.

**Issues for determination.**

- 1. Whether the application is properly before this court?**
- 2. Whether there are sufficient grounds to warrant the grant of a vesting order?**

**Resolution and determination of the issue;**

**Issue 1; whether the application is properly before this Court?**

**6.** It is incumbent on this court to determine the appropriateness of actions brought before it to avoid proceeding in futility. It is trite law that before an applicant invokes the inherent jurisdiction of court; he or she must have applied first for a vesting order to the

Commissioner Land Registration who for some reason must have declined to exercise his or her powers under Section 167 of the Registration of titles Act Cap 230. **(See Mutyaba V Kayimbye & Anor Misc Cause No 40 of 2018)**

7. I will reproduce the provisions of Section 167 of the Registration of Titles Act under which the application is brought which provides as follows;

***“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***

*Hon. J. J. N. N.*

***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.”***

8. I need to emphasize what I believe is the true import of this section to clear the misapplication of the provision in certain circumstances. There is a difference between vesting (Literal meaning) and vesting order (legal meaning). In other words what may amount to vesting in ordinary parlance may not amount to circumstances that warrant the grant of a vesting order as known at law. The vesting order under Section 167 of the RTA has tenets and in their absence one cannot proceed under the section but instead seek remedies elsewhere. Where one envisages applying under the section, the first resort should be made to the Registrar of titles



9. In the instant case, on a cursory perusal of the affidavit of the applicant it is evident that there was never any application for the vesting order made to the Registrar before bringing this application to court as required by the above section. **(See Edward Babigumira V Commissioner for Land Registration Misc Cause No 76 of 2012.)**
10. In the premises, I need not proceed to determine the merits of this application having found that the application is not properly before this court. For this reason alone, the application fails.
11. The application is dismissed and applicant shall meet the costs of the application.

**I SO ORDER.**



**NALUZZE AISHA BATALA**

**JUDGE**

**29<sup>th</sup>/11/2023**