

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
LAND DIVISION
MISCELLANEOUS CAUSE NO. 20 OF 2016

5 **ANNUCIATA HAKUZA NKEZA ::::::::::::::::::::::::::::::::::: APPLICANT**

VERSUS

1. COMMISSIONER FOR LAND REGISTRATION

10 2. MANJERI NALWANGA MALE.....RESPONDENTS

Before: Lady Justice Alexandra Nkonge Rugadya

JUDGMENT (Exparte)

Introduction:

This application is brought under **Section 98 of the Civil Procedure Act,**
15 **Section 33 of the Judicature Act and Order 52 rules 1, 2 and 3 of the Civil**
Procedure Rules 71-1 for orders that:-

a). a vesting order doth issue in favour of the applicant, ANNUCIATA HAKUZA NKEZA.

20 **b). The Commissioner for Land Registration effects the transfer of property comprised in Busiro Block 489, Plot 476 into the names of the applicant, ANNUCIATA HAKUZA NKEZA.**

The 2nd respondent, Manjeri Male was served through substituted service on 31st May, 2022.

Grounds of the application:

The application is supported by an affidavit sworn by the applicant, Annuciata Hakuza Nkeza, claiming as the lawful purchaser of property comprised in **Busiro Block 489 Plot 476** Mengo is Nabukenya Rehema who cannot be found/traced.

- 5 That the registered proprietor sold the suit property to a one Manjeri Nalwanga Male (2nd applicant) and left the agreements and transfer forms in favour of Manjeri Male with her advocates **M/s Kaggwa and Kaggwa Advocates** from where the same were irretrievably misplaced.

- 10 That the applicant, Mrs. Annuciata Hakuza Nkeza bought the suit property from Manjeri Nalwanga Male, immediately took possession of the suit property, has and is still in possession of the same having paid the purchase price in full.

Furthermore, that her efforts to apply to the registrar of Titles to vest the same into the names of the applicant did not succeed as the applicant was advised to apply for a vesting order from this court.

- 15 That the applicant is the rightful purchaser, desirous of transferring the property into her names with the help of the vesting order as the vendor cannot be found.

Consideration of the issue:

The issue for determination in this application is whether the applicant is entitled to a vesting order in respect to the suit land.

- 20 Counsel cited the provisions of **section 167 of the Registration of Titles Act** and he effect that the Registrar may make a vesting order if it is proved to the satisfaction of the Registrar that: land under this Act has been sold by the proprietor; the whole of the purchase money paid; and that the purchaser has or those claiming under the purchaser have entered and taken possession under
25 the purchase; that entry and possession have been acquiesced by the vendor; and registration cannot be obtained by reason that a transfer has never been executed by the vendor and cannot be found.



Counsel also cited the Court of Appeal interpretation of **Section 167 of the RTA** in the case of **Aida Najjemba Vs Ester Mpagi, Civil Appeal No. 74 of 2005** that four conditions must be satisfied before the Registrar can exercise his or her powers that is:

1. *The land must be registered under the RTA and the purchase must have paid the whole of the purchase price to the vendor.*
2. *The purchaser or those claiming under him or her have taken possession of the purchased land.*
3. *The purchaser has entered the land and the entry has been acquiesced in by the vendor or his or her representative.*
4. *The transfer of the property has not been executed because the vendor is dead or is residing out of jurisdiction or cannot be found.*

Regarding the first condition, **section 59 of the RTA** stipulates, *inter alia*, that a certificate of title shall be received by court, as conclusive evidence that the person named therein is the proprietor with power to dispose of the land described therein in accordance with the provision. (Ref: **Ronald Aine Commissioner for Land Registration in HC Misc. Cause No. 90/2013; Edward Babigumira vs Commissioner for Land Registration H.C. Misc. Cause No. 76 of 2012**).

From the contents of *paragraph 2* of the affidavit in support of the application, the applicant purchased land comprised in **Busiro Block 489 Plot 476 Mengo** from Manjeri Nalwanga Male who had previously bought from Nabukenya Rehema.

The applicant attached to her affidavit in support a copy of the sale agreement (which had no date). No certificate of title of the suit land was however attached



as proof that the suit land was registered under the Registered Registration of Titles Act, comprised in **Busiro Block 489 Plot 476 Mengo**.

Under the sale agreement **Annexure A**, a total sum of **Ugx 60,000,000/=** was meant to be paid as consideration. At the execution, a sum of **Ugx 28,000,000/=** was to be paid by the purchaser.

By signing the agreement, the vendor acknowledged receipt of the said sum. A further sum of **Ugx 2,000,000/=** was to be paid on 15th August, 2012; and the balance of **Ugx 30,000,000/=** to be paid upon signing the transfer forms to the purchaser.

10 Under *clause 4*, upon payment of the sum of **Ugx 2,000,000/=** as agreed in *clause 3 (b)*, the duplicate certificate of title was to be deposited with the purchaser.

Upon payment of the balance of **Ugx 30,000,000/=** the vendor committed herself to transfer all documents necessary for the completion and satisfaction of the transfer into the purchaser's names.

Annexure B which is the statutory declaration in support of the vesting order was deponed on 19th November, 2015 by Mr. David Kaggwa of **M/s Kaggwa & Kaggwa Advocates**. This was three years after the agreement had been signed.

20 The declaration indicates that in January, 2012 the agreements and transfer forms had been left in the custody of the said firm of advocates, but the transfer forms were misplaced; and that all efforts had been made to meet the vendor again to sign other forms did not yield any results. The applicant however did not indicate what specific efforts or steps had been taken to trace the vendor.

25 The sale agreement between Nabukenya Rehema Male and the vendor, Manjeri Nalwanga Male was not availed to court. It cannot therefore be established with certainty whether or not indeed Manjeri Nalwanga Male, the 2nd respondent had purchased the suit land and the title for the suit land duly passed onto her, from



Nabukenya Rehema Male purported to be the registered owner of that land. Nabukenya in any case, was not made party to this application.

Furthermore, the duplicate certificate for the suit land was never left behind for the purchaser (applicant) as per the terms of the agreement. Indeed no Police
5 record was availed to prove that the loss of the documents had been reported.

Referring to *paragraph 2 and 4* of applicant's affidavit in support of this application, it was the learned counsel's argument that the duplicate certificate of title was deposited with the applicant upon completion of payment of the purchase price and has been in possession of the same pending the transfer.

10 There was no such information as alluded to by him in any of those paragraphs. This was therefore mere evidence from the bar.

Court cannot rely on a statutory declaration of a stranger to the transaction as proof of transfer and/or ownership of titled land. It is not established who the deponent) was representing in that transaction.

15 Given the nature of land transactions it is inconceivable that the applicant as a serious buyer would have failed to retain copies in her possession of any of the key documents relating to the transaction but leave everything in the custody of the lawyers for the vendor.

She could not even prove that the title was duly transferred from Nabukenya
20 Rehema Male, the original owner to the person purported to be her predecessor in title.

There is nothing besides, to satisfy court that the full payment had been paid by her to Manjeri Nalwanga Male to complete the transaction as per the terms of the agreement.

25 In *paragraph 5* of the said declaration it was also deponed that the LC leadership had endorsed the transaction. That endorsement could not however be found anywhere from the evidence on record.

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More than 10 years after the transaction was made, it would be unsafe for this court to assume that the land is still in the names of Nabukenya Rehema Male. The applicant did not therefore assist court to rule out the possibility that there could be third party interests involved in this claim.

- 5 It is trite that he who alleges must prove. Under those circumstances, the least that could have been done for the proper guidance of this court was to supply evidence of previous ownership and proof that such land indeed existed, illustrated at least by an area schedule; duplicate or certified copy of the certificate of title; or a search certificate relating to the same, or any other
10 documents from the land office indicating that Nabukenya Rehema Male was the registered proprietor. The supporting documents for this application were thus found wanting.

Not only did the applicant fail to provide evidence of physical possession to support her averment in *paragraph 4* of her affidavit, she did not present to court
15 any request or such correspondence to the office of Commissioner, Land Registration, as suggested by virtue of *paragraph 5*, requesting that office to issue the vesting order in her names for the purpose of exercising its statutory powers under **section 167 of the RTA.**

Counsel cited the authority in ***Aida Najjemba Vs Esther Mpagi (Civil Appeal***
20 ***No. 74 of 2005) Byamugisha JA*** that even though an application for a vesting order must be made to the registrar of titles, the High Court has unlimited jurisdiction in all matters and the trial judge in that case had been right to grant a vesting order under **Section 167 of the Registration of Titles Act.**

That may be the case, however, citing that authority can only imply that the
25 applicant was not telling the truth in *paragraph 5* of her affidavit when she averred that she had applied to the said office which had advised her to apply for a vesting order from this court.



In passing therefore, an applicant who seeks court's intervention for a vesting order should not to assume that court would apply different principles or standards from the ones as stipulated under **section 167 of the RTA**.

Accordingly, this court declines to grant the application.

5 No orders for costs.



Alexandra Nkonge Rugadya

Judge

20th March, 2023

Delivered by email
Alexandra Nkonge Rugadya
24/3/2023