

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

MISCELLANEOUS CAUSE NO 0132 OF 2022

(Arising from Wakiso CS No. 33 of 2021)

MUBIRU YAFESI:.....APPLICANT

VERSUS

1. COMMISSIONER OF LAND REGISTRATION

2. NSUBUGA LEONARD


3. NANSIMBE IMMACULATE:.....RESPONDENTS

BEFORE: HON. MR. JUSTICE TADEO ASIIMWE

RULING

This application was brought by notice of motion under Article 139(1) of the Constitution of the Republic of Uganda, 1995, Section 98 & 64 of the Civil Procedure Act Cap 71, Section 78 of the Registration of Titles Act Cap 230, Order 52 Rules 1 and 2 & ORDER 6 RULES 19 & 20 of the Civil Procedure Rules SI 71-1 seeking for orders that;

1. A vesting order be granted in favour of the Applicant in respect of land at Katubwe Banda comprised in Busiro Block 253, Plot 52 (hereinafter the suit land),


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2. The 1st Respondent enters the Applicant's name in the Register Book in respect of the suit land;
3. The 1st Respondent issues a special certificate of title in respect of the suit land in the name of the Applicant;
4. The costs of this matter be borne by the 2nd & 3rd Respondent.

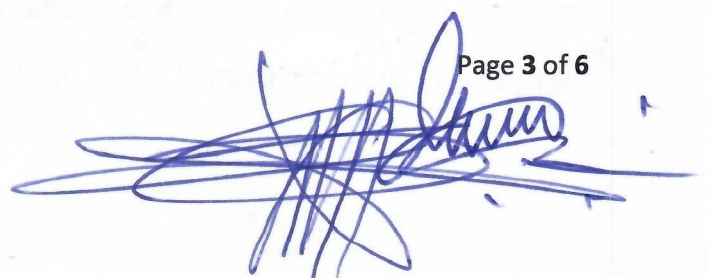
The grounds of this application briefly are;

1. That there is a Court Decree dated 1st day of February 2022 from the chief magistrate Court of wakiso at Wakiso.
2. That the land comprised in block 253, Katubwe Banda, Busiro County in Wakiso District (suit land) is registered in the names of Nsubuga Leonard, the 2nd respondent.
3. The 2nd and 3rd respondents are judgment debtors in civil suit No. 033 of 2021, between Kabugo Najib Vs Nsubuga Leonard and Nansimbe Immaculate at Wakiso Chief Magistrate Court.
4. The Wakiso Chief Magistrate Court ordered a Court bailiff namely Mutibwa Johnson to sale the said suit land by public Auction upon the said Nsubuga Leonard (2nd & 3rd respondents) failing to pay, the successful plaintiff's damages and cost of the suit.
5. The public auction of the suit land was conducted by the said bailiff wherein the applicant was the successful bidder and the suit land was sold to him by the aforesaid Court bailiff following a Court order.
6. The Chief Magistrate of Wakiso Court, issued a vesting orders to the Registrar of Titles, Ministry of Lands Wakiso Zonal Office, directing and ordering the registration of the Applicant as the new owner of the suit land.

7. The said Court bailiff also applied to the Registrar of Titles, Ministry of Land, Wakiso Zonal Office, requesting that the suit land be registered in the Applicant's names following a sale by public auction.
8. The 1st respondents however refused to implement then said Court order and directives of the Chief Magistrates Court of Wakiso vesting the land into the applicant under the disguise that Chief Magistrate Court has no power to vest the suit land into the Applicant's names.
9. Further that the jurisdiction to vest the suit land to the Applicant is within this Honorable Court.
10. The suit land is already in possession of the applicant and the 2nd & 3rd respondents have laid no claim whatsoever either by appeal or by any form of proceeding to oppose the said vesting orders of the Chief Magistrate's Court of Wakiso.
11. The 2nd and 3rd respondents peacefully vacated the suit land in favor of the applicant who is in quiet and undisturbed possession.
12. That there is no any encumbrances laid against vesting the suit land to the applicant and or affecting the transfer of the suit land.
13. The Duplicate Certificate of Titles cannot easily be traced to ease the process of effecting transfer or any change to the Applicant without undue delay.
14. That it is just and equitable that this application is allowed.

The application was not opposed as no reply was filed despite the fact that the 1st and 3rd respondents were directed to file submissions and replies.

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At hearing, the applicant was represented by Counsel Mbasia Denis, the 1st respondent by Ssekabira Moses and the 3rd respondent by herself. The 2nd respondent never appeared as he was reported to be in Sudan.

All parties never filed written submissions.

Resolution

Section 167 of the Registration of Titles Act Cap 230 under which this application was brought provides that;

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 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.

I shall first determine whether this application is properly before Court before delving on the merits of the application. It is trite law that before an Applicant invokes the inherent jurisdiction of Court under Section 98 Civil Procedure Act, 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 is undisputed that the Applicant did apply to the Registrar before bringing his application to Court and the same was declined on grounds that the order was issued by a Magistrate Court.

Although the law confers unlimited jurisdiction to this Court, the same must be exercised Judiciously and legally.

In this application, the applicant is seeking to obtain a vesting order arising from an execution of a court order issued at wakiso Magistrates Court. This therefore means that said order and execution process must have been done properly in accordance with the law. This calls for examination of the execution process which led the applicant to purchase the suit property under **civil suit number 033 of 2021.**

It is the applicant's evidence that the suit property was registered in the names of the 2nd respondent, a judgement debtor and his property was to be sold in execution through a public auction. A court bailiff was accordingly appointed and he sold the suit property to the applicant.

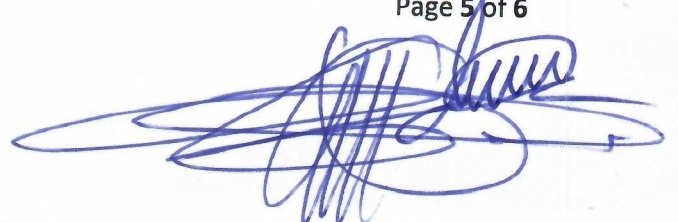
Section 48(1) of the CPA governs all sales in execution of a court order and it provides;

“a sale shall not proceed until title has been lodged in Court”

Therefore, sales in execution without a title lodged in Court cannot be valid. **See the case of Grace Ofono M.A No. 669 of 2015.**

In the event the duplicate certificate is not forthcoming, Court under subsection 4 has powers to order for a special certificate during execution.

In this matter, during execution, the duplicate certificate was not availed and no special certificate was sought before the sale to the applicant in execution. In my

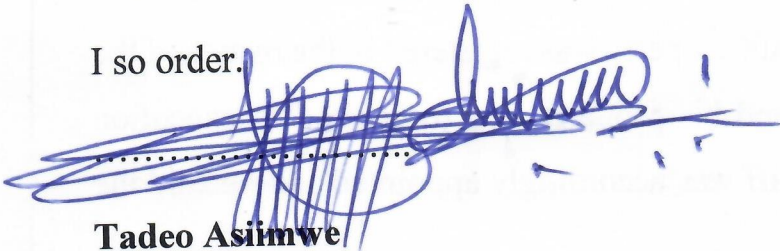


considered view the said sale in execution was incurably defective. By this application, the applicant is seeking to validate the irregular sale which cannot be allowed.

From the above findings, the entire execution process was flawed and irregular and it cannot be validated by this court.

Given the above, I do not need not proceed to determine the merits of the application. Accordingly, this application is dismissed with no order as to costs since the respondent failed to participate in the application.

I so order.



Tadeo Asimwe

JUDGE

11/01/2024.