

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(LAND DIVISION)

MISCELLANEOUS CAUSE NO. 0346 OF 2023

5 **ATUKWASA BENIA:.....APPLICANT**

VERSUS

COMMISSIONER LAND REGISTRATION:.....RESPONDENT

Before: Lady Justice Alexandra Nkonge Rugadya.

Ruling.

10 This application brought by motion under the provisions of **Article 139 (1) of the Constitution of the Republic of Uganda, Section 33 of the Judicature Act, Cap.13, Section 98 of the Civil Procedure Act cap. 71, Section 167 of the Registration of Titles Act cap.230 and Order 52 rules 1 & 2 of the Civil Procedure Rules SI 71-1** seeks orders that;

15 **1. A vesting order be granted in favour of the applicant in respect of the 8 (eight) acre piece of land part of registered land comprised in Freehold Register Volume 53 Folio 21 at Katalemwa West Mengo Komamboga Kawempe Division Kampala District;**

20 **2. The respondent issues a certificate of title in the names of the applicant for the 8 (eight) acre suit land out of the parent title of land comprised in Freehold Register Volume 53 Folio 21 at Katalemwa West Mengo Komamboga Kawempe Division Kampala District;**

25 **3. The respondent enters the applicant's names in the register in respect of the suit land;**

4. Costs of the application be borne by the respondent.



Grounds of the application:

The grounds upon which this application is premised are contained in the affidavit in support deponed by Ms. Atukwase Benia, the applicant wherein she states *inter alia* that the land comprised in land comprised in **Freehold**
5 **Register Volume 53 Folio 21 at Katalemwa West Mengo Komamboga**
Kawempe Division Kampala District measuring approximately 45 acres is jointly registered in the names of Abdul – Munim Hassanali Lakhani and Nizarali Hassanali Lakhani who before their departure upon the expulsion of the Asians from Uganda in 1972 sold 8 acres of the said land to a one Hajji
10 Ssekitto Ssebagala at a consideration of USD 2000 (United States Dollar two thousand only).

That the said Hajji Ssekitto Ssebagala took immediate possession thereof until 11th May 2010 when the applicant purchased the eight acres at **Ug.x**
15 **175,000,000/= (Uganda Shillings one hundred seventy-five million only).**

That although the applicant has been in full physical possession of the land since 2010 utilizing the same unchallenged by either the registered proprietors or any third parties and has since developed the same with a church and several commercial units, the original duplicate certificate of title
20 is in possession of the registered proprietors who have never returned to Uganda since 1972, and their whereabouts are unknown.

In addition, that the registered proprietors of the said land left Uganda without signing the mutation and transfer forms for the suit land in favour of the said Hajji Ssekitto Ssebagala who would have in turn signed transfer
25 forms in favour of the applicant, mutating the same from the mother title, and registering the same into his names.

Further, that the applicant prior to filing this application first applied to the respondent for a vesting order back in May 2023 without any success thus it is fair, just and in the interest of justice that a vesting order doth issue
30 directing the respondent to issue a certificate of title for the suit land, and have the same be transferred and registered in the applicant's names.



The respondent did not file an affidavit in reply opposing this application despite being served with court process.

The applicant through her lawyers **M/s Patrick Katende & Co. Advocates** filed written submissions in support of the application.

5 **Consideration of the application.**

I have carefully read the application and submissions of counsel, the details of which I have taken into consideration in determining whether this application merits the grant of the prayers sought herein.

Section 167 of the Registration of Titles Act cap.230 states that;

10 ***'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***
15 ***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***
20 ***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***
25 ***to effect that registration shall be attended by the same results as declared by section 166 in respect of the vesting orders mentioned there.'***

Before I delve into the merits of this application, it is imperative to determine whether or not this application is properly before this court. In the case of
30 ***Aida Najjemba versus Ester Mpagi, Court of Appeal Civil Appeal No. 74 of 2005*** court gave some guidance as to the conditions which ought to be



satisfied under the above provision of the law before the orders sought in an application of this nature can be granted. They are that;

- 5 **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.**
- 10 **3. That the purchaser has entered the land and the entry has been acquiesced in by the vendor or his or her representative.**
- 15 **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.**

In the case before me, it is not in dispute that the suit land is indeed registered property, and that the applicant is in possession thereof. What is in contention however is whether the transfer of property to either the applicant or the said Hajji Ssekitto Ssebagala from whom, the applicant purchased the land has not been executed because the vendors are dead or are out of jurisdiction.

Pursuant to **Section 2 of the Expropriated Properties Act, Cap 87**, the suit property was vested in the Government of Uganda under the management and control of the Departed Asians Property Custodian Board (DAPCB).

25 **Sub section (4)** thereof stipulates that until such a time as the Minister has exercised his or her powers under **subsection (3), the Departed Asians Property Custodian Board** established under **section 4 of the Assets of Departed Asians Act** shall continue to manage such properties and businesses.

30 According to the evidence adduced by the applicant, the property comprised in **Freehold Register Volume 53 Folio 21 at Katalemwa West Mengo Komamboga Kawempe Division Kampala District** part of which he

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purchased comprises part of property that is defined as expropriated property that is now under the management of the Departed Asians Property Custodian Board.

5 Additionally, it is the applicant's undisputed evidence that the registered owners thereof who left the country have never returned. It is the opinion of this court that the property in issue has never been either repossessed by the registered owners, or dealt with by the Minister as per the provisions of the **Expropriated Properties Act**.

10 The property in issue is therefore under the management of the Departed Asians Property Custodian Board which is the only body that can take any decision touching the same. There is no evidence to suggest that the applicant sought redress from the board or the Minister who is charged with dealing with the property in issue.

15 In the premises, in the absence of any evidence that some action or redress was sought from the body charged with management of the property, this court by issuing any orders such as those sought herein would be contrary to the provisions of the **Expropriated Properties Act** which categorically dictates that any such property considered expropriated shall remain under the management of the custodian board until the minister so deals with them.

20 Accordingly, this application is not properly before this court and is hereby dismissed.

No orders as to costs.

.....*Alexandra*.....

Alexandra Nkonge Rugadya

25 **Judge.**

12th January, 2024.

*Delivered by email
Alexandra
12/1/2024*