

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

MISCELLANEOUS CAUSE NO 146 OF 2021

REGISTERED TRUSTEES OF KAMPALA ARCHDIOCESE
..... APPLICANT

VERSUS

- 1. KAMYA DENIS**
- 2. JOHN MPANGA**
- 3. NAKIMULI OLIVER**
- 4. NAMPAMBI JULIET (Administrators and Administratrixes of the estate of the Late John Mpanga)**
- 5. COMMISSIONER LAND REGISTRATION RESPONDENTS**

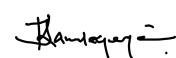
BEFORE; HON LADY JUSTICE NALUZE AISHA BATALA.

RULING

Introduction;

1. This Application was brought by Notice of Motion under Section 98 of the Civil Procedure Act Cap 7, Order 52 Rules 1 and 2 of the Civil Procedure Rules, and Sections 166(1) and Section 177 of the Registration of Titles Act seeking for orders that;

- i) A vesting order be issued directing the 5th respondent to vest the land comprised in Mengo, Busiro Block 396 Plot 45 Land at Bweya to the Applicant.
- ii) Costs of this Application be provided for.



Background;

2. The background of this Application as can be discerned from the court record is as follows;

3. That in 1978, the late John Mpanga, gifted the land described herein above to the applicant; that the applicant at the same time had constructed an educational institution onto the land known as St. Kizito Katwe Primary School.

4. That the late John Mpanga upon gifting the land, deposited the Certificate of title and duly signed transfer forms, with the then Headmistress of the school.

5. That the applicant through their Archdiocese Land Board wasn't critical when looking at the transfer forms enclosed with the Certificate of title. That after sometime as the area around the school started to develop and the land was being encroached on by the neighbours, the applicant sought to transfer the certificate of title and that is when it discovered that the Late John Mpanga had wrongly entered the section of the purchaser as ST KIZITO KATWE PRIMARY SCHOOL instead of the Applicant or the Registered Trustees of Kampala Archdiocese hence making the transfer unusable.



6. That with the lapse of time the 1st, 2nd, 3rd and 4th respondents as Administrators of the Estate of the Late John Mpanga applied for a special Certificate of Title of the land for Block 396 Plot 45 Land at Bweya claiming the same to having been lost, to which the commissioner land registration granted the application and made a special certificate of title.

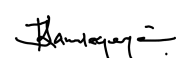
7. That the applicant lodged a complaint with the Commissioner land registration who directed that the owner's copy of the certificate of title which the Applicant claimed to have been produced, was produced and deposited with the Commissioner's office so that he could proceed and cancel the special certificate of title.

8. The Applicant further lodged a caveat onto the white page to prevent the respondents from tampering with the suit land.

9. That it is in the interest of justice and equity that an order be made vesting the said land in the name of the applicant because the 1st, 2nd and 3rd respondents are trying to grab the land.

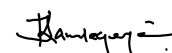
Applicant's evidence;

10. The Application is supported by 4 Affidavits sworn by Father Joseph Ssenkaali, a duly appointed legal representative of the Applicant, Oliver Nakimuli a child of John Mpanga, Paul Njala the



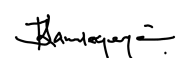
Appointed Chairman of the School Board for St. Kizito Primary School- Katwe and Annet Kanya the current head teacher of St Kizito Primary School-Katwe. The court shall consider the Affidavit of Fr. Joseph Ssenkaali as the leading applicant's evidence, which brief states as follows;

- i) That the Archdiocese was gifted land by the late John Mpanga where the Church constructed a school known St. Kizito Katwe Primary School. The land is located at Bweya-Katwe Kajjansi Town Council in Wakiso District comprised in Mengo, Busiro Block 396 Plot 45 land at Bweya.
- ii) That the late John Mpanga upon gifting the land, handed over the certificate of title and accompanying instruments of transfer for the said gifted land where the school is located to the then Headmistress of the School.
- iii) That the then Headmistress of the School handed over the certificate of title and the instruments of transfer to the Archdiocesan land office.
- iv) That the archdiocesan land board wasn't keen on observing entries made on the transfer forms that were enclosed with the Certificated of Title. However, if the applicant and board had been keen enough, it would have



noticed that the said John Mpanga had entered the transferee as St. Kizito Katwe Primary School instead of the Registered Trustees of Kampala Archdiocese.

- v) That over time, the area around the school started developing with people building and with this, the church started noticing encroachment on the school land, at this point, they tried to have the certificate of title transferred so that they could carry out boundary opening and that's when they realized that the transfer instruments had been wrongly filed. By this time, the donor John Mpanga had already passed on and the corrections could not be made.
- vi) That on the 6th February 2016, the head teacher of St Kizito Katwe Primary School received a letter from M/s Bbale, Lubega and Co. Advocates writing on behalf of the 1st, 2nd, 3rd and 4th respondents claiming that the school was a trespasser onto the land and was demanding that the school meets them to iron out the ownership issues of the land.
- vii) That the headteacher brought the letter to the attention of the Parish Priest of St. Padre Pio Kabulamuliro Parish whose parish the school falls who in turn communicated



to the Archdiocese of these developments. The land Board through its Head Mr Charles Kato then lodged a caveat on the land instrument number WAK-00119574.

- viii) The Archdiocese further made an application through its lawyers to the commissioner land registration to have the special certificate of title that the respondents had obtained to be cancelled through an application dated 29th April 2017.
- ix) That the commissioner land registration demanded that for the cancellation to be effected, the Archdiocese had to produce the owners' copy of the certificate of title in his office which was effectively done on the 7th of June 2017 when it was received by the commissioner's office.
- x) That the Applicant was advised by their lawyers that the Applicant cannot effectively transfer the subject land in the normal process because the registered proprietor died and the instruments of transfer held by the Applicant were poorly filed, to which the current administrators of the Estate are trying to grab the land that houses the School known as St. Kizito Katwe Primary School.



- xi) That the land belongs to the applicant and the Duplicate Copy of the Certificate of Title of the land described herein is in the custody of the Applicants. The Archdiocese is in possession of the land through the school.
- xii) The Applicant was advised by their lawyers that the only way the Applicant's interest in the land herein above-mentioned would be secured was through a court order.

Representation;

11. The Applicant was represented by Mr. Katongole Joseph of M/s Katongole, Yiga and Masane Advocates and Solicitors whereas the Respondents were not represented and neither did they file any reply to the Application. The court will rely on the Applicant's Affidavits in support of the Application and written submissions to determine this matter.

Issue for determination;

Whether there exist sufficient grounds for this honourable court to grant the vesting order?



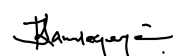
Resolution and determination of issues;

12. I shall first determine whether this Application is properly before the court before looking at any other merits of this Application.

13. Prior to advancing, I wish to acknowledge that the heading in the Notice of motion implies an ex parte application, despite the applicant filing it against the respondents and naming them in the suit's heading. The lack of evidence of service on court file leaves open the possibility that the respondents have not been served with this application later on the submissions in this application. Nevertheless, I will proceed and make a determination on this application.

14. Having meticulously perused the affidavits supporting the application and the submissions presented by the applicant, I shall proceed to adjudicate on this matter with due consideration to the aforementioned documentation.

15. Upon my initial examination of all the affidavits in this matter, a conspicuous obscurity prevails concerning the historical ownership of the land in question. Consequently, a comprehensive investigation is imperative, encompassing the identification of the lawful owners and elucidating the trajectory that led to its current



status. Moreover, while the applicant asserts clarity in her claim before this honourable court, denying any unsubstantiated allegations, it cannot dismiss the possibility of other parties, as numerous deponents in their affidavits state that they claim interests in this specific parcel of land.

16. It is my contention that these parties, regardless of their capacity, have a valid case to present before this court, given the indisputable fact that the land is mired in a dispute, irrespective of the apparent clarity the applicant seeks to convey. It is crucial to emphasize that this court assumes the role of a judicious arbiter, eschewing the role of respondent's counsel, with a primary focus on exercising judicial prudence to avert prolonged litigation on this matter.

17. Counsel for the applicant submitted that this application is provided for under Section 166 (1) of the Registration of Titles Act Cap 230 and I would like to reproduce the content of that section; *"Where any person interested in Land under the operation of this Act or any estate or interest in land **appears to the High court to be a trustee of that Land, estate or interest within the intent and meaning of any law for the time being in force relating to trusts and trustees, and any vesting order is made***

Hanley

in the premises by the High Court, the registrar, on being served with the order or any office copy of the order, shall enter in the Register book and on the duplicate certificate of title and duplicate instrument, if any, the date of the order, the time of its production to him or her, and the name and addition of the person in whom the order purports to vest the Land, estate or interest.....”

18. It is evident to me that the emphasized statement does not negate the court’s investigative role in thoroughly probing matters to their conclusion and delivering just and effective remedies, thereby upholding reliability within Uganda’s judicial system.

19. The draftsmen did not intend to eliminate court’s investigative function. I posit that a party would not invoke the said section without duly establishing their rights in the High Court.

20. The careful choice of words by the framers, specifically “appears to the High Court” significantly broadens the court’s authority to investigate any matter when party seeks relief under section 166 of the Registration of Titles Act. Consequently, the section only becomes applicable when a person has clearly established their rights before the High Court. It follows that the section is invoked after the High Court determines that the interest of a person claiming under the section is unequivocal.

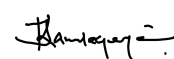


21. The Black's Law Dictionary 2nd Edition defines a vesting order as an order which may be granted passing the legal estate in lieu of a conveyance. A vesting order, being a highly consequential decree, bestows proprietary interest upon a person, a step that may be taken in error if the order is granted without a proper degree of certainty regarding the circumstances of ownership.

22. In the instant application, counsel summed up the gist of the entire application on the part of the applicant wherein he submitted that the land was given to the applicant as a gift. I believe the circumstances under which this gift was donated and the transfer forms signed in favour of another entity and not the applicant ought to be investigated and concluded to finality. There are so many triable issues surrounding this dispute some of which require adducing evidence beyond affidavit evidence.

23. There is also a possibility of a multiplicity of suits assuming this court grants this order without ironing out and making proper any claims on the land.

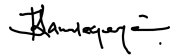
24. This court advises that the applicant pursues an action by way of ordinary suit that will provide a platform to conclusively resolve all matters related to land ownership of the land comprised in Mengo, Busiro Block 396 Plot 45 Land at Bweya.



25. This honourable court proceeding to determine all the issues regarding the suit land through an application of such a nature would be occasioning a miscarriage of justice to all the parties involved.

26. In consideration of the foregoing, the application is found to be without merit and is hereby dismissed with no orders as to costs.

I SO ORDER.



NALUZZE AISHA BATALA

JUDGE

01/02/2024