

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
LAND DIVISION
MISCELLANEOUS CAUSE NO. 56 OF 2012**

SSENGOOBA ALIFUNSI..... APPLICANT

VERSUS

COMMISIONER LAND REGISTRATION..... RESPONDENT

RULING

BEFORE HONOURABLE LADY JUSTICE EVA K. LUSWATA

This application was brought by notice of motion under the provisions of Section 167 and 177 of the Registration of Titles Act Cap 230 (RTA) and Order 52 rules 1 and 3 of the Civil Procedure Rules SI 71-1. The applicant sought for the following orders that:

- a) The Certificate of Title for the piece of land comprised in Kyadondo Block 222 Plots 1515 and 1516 land at Namugongo (hereinafter referred to as the suit land) be vested in the applicant.
- b) There be no order as to costs.

The grounds upon which this application was based were contained in the affidavits of **SSENGOOBA ALIFUNSI** (the applicant), and that of Freddie Nyanzi. I noted that both affidavits of Freddie Nyanzi and one by the applicant indicated no date on when the oath was taken which would offend the provisions of section 5 of the Commissioner for Oaths (Advocates) Act.

Further, both those particular documents bear no evidence of a court stamp, which would indicate that they were not formerly received by this court. I conclude that they do not form part of the record and as such I will not rely on them.

Fortunately, the applicant did include grounds in his Notice of Motion which I re-produce as follows:-

1. The Vendor and his predecessor in title passed away before effecting transfer of the Land into the Applicant's names.

2. That the applicant has been in uninterrupted possession of the land since purchasing it and he has fully developed the same, without any other claimant.
3. There is no known administrator of the estate of the late Edward Kirabira or Julius Kiyanzi Mupere and as such, the applicant is unable to obtain a transfer of the land into his names.

In addition to this, the applicant also swore a supplementary affidavit on 17/7/12 wherein he stated that he had by an oversight omitted to include Block 222 Plot 1514 in the application. That he had also purchased Plot 1514 from the late Julius Kiyanzi Mupere, son of Edward Kirabira. That he was also in possession of that land and was not aware of any adverse interest in it.

There was no response to the application despite the respondent having been served with hearing notices. She also failed to turn up for the hearing of 10/12/13 even after having been served on 5/12/13. In the case of **Samwiri Massa Vs. Rose Achen [1978] HCB 297** it was held that where certain facts are sworn in an affidavit, the burden to deny them is on the other party and if he or she does not, they are presumed to have been accepted. It is deemed therefore that the respondent had no opposition to the application.

The main issue therefore is whether the applicant is entitled to a vesting order with respect to the three plots above. The applicant filed written submissions and the respondent did not.

The law in regard to a vesting order as provided under **Section 167 of the Registration of Titles Act** states 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 to 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 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.”emphasis mine

The above Section was interpreted in the case of **Re Ivan Mutaka [1980] HCB 27** by **Odoki Ag. J** (as he then was) where he held that;

“...Before the court makes a vesting order, the following circumstances must be proved:-

- a) That there has been a sale of land the title of which is registered under the Act;*
- b) That the whole of the purchase price has been paid;*
- c) That the purchaser (or those claiming under him or her) has taken possession of the land;*
- d) That the entry into possession by the purchaser has been acquiesced in by the vendor or his or her representatives;*
- e) That a transfer has not been executed and cannot be obtained because,*
 - i) The vendor is dead, or*
 - ii) The vendor is residing out of jurisdiction, or*
 - iii) The vendor cannot be found.”*

In my view, the application will succeed only if the following are satisfied:-

1. That the applicant purchased from the registered proprietor.
2. That the whole of the purchase price was paid.
3. That the applicant or those claiming under him took possession of the suit land.
4. That the vendor or his representatives acquiesced to the applicant's taking possession.
5. That a transfer form cannot be reasonably obtained (emphasis mine).

A plain reading of section 167 RTA indicates that the powers therein are a preserve of the Registrar of Titles. The short title to that section is indicative enough. The application before me therefore would be, at the outset, misconceived.

However, courts have previously taken a more liberal approach to that section. In particular, the Court of Appeal in **Aida Najjemba Vs Esther Mpagi** was of the view that although an application for a vesting Order must be made to the Registrar of Tittles, the High Court has unlimited jurisdiction in all matters. I take a similar position, and will thus entertain this application.

The above notwithstanding, in the absence of the supporting affidavits, I am only able to rely on the grounds in the application which are by the nature of the application, quite limited. Therein, the applicant shows that the vendor and his predecessor passed away before affecting the transfer of the suit land into his names. That he has since the purchase been in uninterrupted possession thereof and developed it without any adverse claim. And also that there is no known administrator of the estate of the late Edward Kirabira or Julius Kirabira Mupere, the latter from whom he purchased the land.

In his supplementary affidavit, the applicant mentions that he also purchased Block 222 Plot 1514 from Julius Kiyanzi Mupere son of Edward Kirabira and seeks a vesting order with respect of all three plots namely Block 222 Plots 1514, 1515 and 1516.

Although I have chosen to ignore the contents of the affidavit sworn by the applicant and Freddie Nyanzi, by inference, the supplementary affidavit brings out the fact that the land was at one time the property of Edward Kirabira. This fact is supported by a search report of the commissioner of Land Registration dated 27/2/12. It is a public document that I will take cognizance of (albeit the fact that it was presented with an affidavit that I have found to be defective). According to the report, Edward Kirabira was registered as proprietor with respect to Block 222 Plots 1515 and 1516, Namugongo on 14/8/73 vide instrument No.70321 of that date.

Therefore, going by the contents of the application and that report, Edward Kirabira is the registered owner of the suit land and, Julius Kiyanzi Mupere merely his successor. In both the application and the submissions by counsel, it is clear that the vendor in the transaction was Julius Kiyanzi Mupere as successor of Edward Kirabira.

The provisions of section 167 of the RTA are clear. The transaction must be by the registered proprietor and no other person. Where he is deceased, then section 268 of the Succession Act comes in operation. Julius Kiyanzi Mupere would in law be permitted to deal with the suit land

only after he obtained Letters of Administration with respect to Edward Kirabira's estate. No evidence was adduced to show that he was the administrator of that estate at the time of the sale, and as such, he could not sell the suit land.

Therefore, whether the applicant did pay the full purchase price is irrelevant. No vesting order can be made with regard to a transaction in which the registered proprietor or if deceased, the administrator of his estate was not a party.

The fact that there is no known administrator with respect of Julius Kiyanzi Mupere's estate is also irrelevant. The sale was at the onset void for Mupere should have first obtained a grant before dealing in the land. I am accordingly unable to grant the vesting order as requested.

The applicant by his supplementary affidavit attempts to apply for a vesting order with respect to Block 222 Plot 1514. An affidavit is evidence that is usually used to support a substantive application and cannot amount to an application of any kind known in procedural law. It is evident that Plot 1514 was never mentioned in the application and in fact, no proof was attached to the affidavit to support the fact that it is also in the names of Edward Kirabira. I accordingly decline to grant that prayer as well.

Having decided that the applicant purchased the suit land from a party, who in law, had no powers to deal with it, I do not find it necessary to make a finding on whether the full purchase price was ever paid or that a transfer cannot be reasonably obtained. However, it is mentioned in the application that the applicant has been in uninterrupted possession of the land since its purchase and has fully developed the same, without any adverse claim. He may as a result have acquired certain equitable rights through prolonged and uninterrupted possession. In my estimation, he may still be able to obtain registration if he were to pursue administration of the late Edward Kirabira as a 'creditor/purchaser' or better, seek the intervention of the Administrator General who by law has the mandate to administer estates of all deceased persons in Uganda, to pursue the grant. The Administrator General can then complete the transaction.

In conclusion, I find that the applicant has failed to fulfill the conditions of a vesting order with respect to Block 222 Plots 1514, 1515 and 1516 Namugongo. I decline to make the order and it is hereby dismissed. The application was uncontested and I thereby make no order, as to costs.

Dated at Kampala the 19th day of December, 2013.

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EVA K. LUSWATA
JUDGE