

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

**MISC. CAUSE NO. 22 OF 2018**

**IN THE MATTER OF LAND AT NAMWEZI COMPRISED IN KYADONDO BLOCK  
120, PLOT 1709 MEASURING 0.0500 HECTARES**

**AND**

**IN THE MATTER OF AN APPLICATION FOR AVESTING ORDER, REMOVAL OF A  
CAVEAT AND ISSUANCE OF A SPECIAL CERTIFICATE OF TITLE IN RESPECT  
OF THE ABOVE CAPTIONED LAND**

**WALUSIMBI SAMUEL.....APPLICANT**

**VERSES**

- 1. AMBROSE NASASIRA**
- 2. COMMISSIONER LAND REGISTRATION.....RESPONDENTS**

**BEFORE: HON. MR. JUSTICE HENRY I. KAWESA**

**RULING**

This application was brought by Notice of motion under Article 139 (1) of the Constitution, Section 14(1) of the Judicature Act, Section 98 of the Civil Procedure Act, Sections 71, 167, 168 of the Registration of Titles Act and Order 52 rule 1 & 2 of the Civil Procedure Rules for orders that;

- a) A vesting order be granted in favor of the Applicant in respect of land at Namwezi comprised in Kyadondo Block 120, plot 1709 measuring 0.0500 Hectares.

- b) That the 2<sup>nd</sup> Respondent removes the Applicant's caveat notified in the register book registered on 14<sup>th</sup> March 2017 Vide Instrument WAK 00118768.
- c) That the Respondent enters the Applicant's name in the register book in respect of the land as the registered proprietor thereof.
- d) That the costs of this matter be borne by the 1<sup>st</sup> Respondent.

The grounds of this application are contained in the Notice of Motion and the affidavit in support of the Applicant Mr. Walusimbi Samuel and briefly are that;-

- a. That the land is registered under the provisions of the Registration of Titles Act, Cap 230.
- b. That the Applicant purchased the whole of the land from the 1<sup>st</sup> Respondent and he paid the whole of the purchase price to the 1<sup>st</sup> Respondent and that he is in possession.
- c. That the entry into possession of the land by the Applicant has been acquiesced by the Respondent.
- d. That the transfer of the land to the Applicant has not yet been effected because the Applicant cannot find the Respondent who is supposed to sign a transfer instrument in the Applicant's favor as well as surrender the duplicate certificate of title to the Applicant.
- e. That the 1<sup>st</sup> Respondent registered the certificates of title to the above land in the names of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents, his companies for the benefit of the Applicant.
- f. That this honorable Court has unlimited jurisdiction in all matters including the granting of the above orders.

It is on record, the 1<sup>st</sup> Respondent (Nasasira Ambrose) was served through substituted service to appear and reply to this application but in vain, there is also proof of service sworn by Gaswaga Julius a Court process server on the 2<sup>nd</sup> Respondent who did not file a reply to this application.

When this application came up for hearing on the 10<sup>th</sup> June 2019, the Applicant sought leave to file a supplementary affidavit which was granted and it was accordingly filed where in the Applicant added that;- prior to filing this application, he applied to the 2<sup>nd</sup> Respondent for a vesting order in respect of the subject land and that it either refused or failed to do so, that he also applied to the 2<sup>nd</sup> Respondent to remove his caveat notified in the Register Book Registered on 14<sup>th</sup> March 2017 Vide instrument N0. WAK 00118768 and that still the 2<sup>nd</sup> Respondent either failed or refused to do so.

Further, that he also applied to the 2<sup>nd</sup> Respondent to enter his name in the Register Book in respect of the subject land as the registered proprietor and that the 2<sup>nd</sup> Respondent either refused or failed to do so, and that finally, that he also applied to the 2<sup>nd</sup> Respondent to issue a special certificate of title for the subject in his name and that the 2<sup>nd</sup> Respondent either refused or failed to do so.

It is good practice that before a party moves Court for the grant of a vesting order, he must have first applied to the Registrar of Titles for the same before proceeding to High Court.

See *Mutyaba versus Kayimbye & Anor; Misc. Cause No 40 of 2018* where *this Court* noted that;-

*“I do agree with Counsel for the Applicant that the afore said provisions of the law confer unlimited jurisdiction to this Court. Whereas this is true, I am doubtful whether this is the case in the instant application. It appears to me that Section 167 Registration of Titles Act makes it a procedural prerequisite that applications of this nature must be made to the Commissioner for Land Registration before coming to Court. ”.*

Under Section 167 of the Registration of Titles Act of which this application is brought and it provides that;

*“if it is proved to the satisfaction of the registrar that the land under the Registration of Titles Act had been sold by the registered proprietor and the whole of the purchase money been paid, and the purchaser is or those claiming under the purchase and that*

*entry and possession have been acquiesced by the vendor or his or her representative, but that the transfer has not 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...”.*

The Applicant by his supplementary affidavit avers in paragraph 2 that he applied for a vesting order, removal of caveat and special certificate of title to the registrar and that the registrar either refused or failed to grant the same to the Applicant. Upon perusal of the Court record, there is no proof of any of the above applications as stated by the Applicant.

In ***Edward Kimera versus Nakakembo Christine & 5 Ors, Misc. Cause No. 139 of 2018***, this Honorable Court noted that;

*“An affidavit is not a pleading as its aim is to act as evidence given by the declarant who acts under oath.”*

Therefore, the Applicant was supposed to lead all his evidence attaching proof to his assertions. In ***Mutyaba versus Kayimbye & Anor (supra)*** the trial judge had this to say before he could grant a vesting order;-

*“If the Registrar declines or fails so to do, and evidence of such failure is provided, this Court shall be pleased to automatically grant the said orders upon such proof”.*

As such, I find that the above procedure was not followed by the Applicant see ***Ronald Oine versus Commissioner for Land Registration Misc. Cause No. 90 of 2013,***).

For the issuance of a special certificate of title, counsel for the Applicant in his submission relied on Section 70 of the Registration of Titles Act which that;-

*“for the issuance of a special certificate of title where the duplicate is lost, destroyed or becomes so obliterated as to be useless, the persons having knowledge of the circumstances may make a statutory declaration stating the facts and the particulars of all encumbrances affecting the land or the title to the best of the deponent’s knowledge”* (underlying is for emphasis).

It is my view that counsel cited this section out of context because the Applicant has not pleaded any of the above circumstances affecting title to the land but rather seeking Court to vest the land into his names and issue him with a special certificate.

In the matter of vesting order of **Telecom mast, Daniel Nkalubo Sebugwawo; (Applicant); Misc. Application No. 007 of 2014)** Justice Henry Peter Adonyo defined a vesting order to mean;

*“A Court order that passes legal title in lieu of a legal conveyance”*

He added that;

*“It is an equitable remedy and is therefore, by its nature, discretionary, and results from a finding by a Court that fairness demands that the Court act in a way to transfer property from one party another”.*

Further that;

*“This occurs once the Court has determined that one party is entitled to ownership of specific property, another party has legal or beneficial title to that property, and it is appropriate that title to the property be transferred to the entitled party by way of Court order”.*

From the above case it can be seen that whereas under Section 70 of the Registration of Titles Act the Applicant must have at one time had or seen the title, with a vesting order, equity demands the passing of title from one party to another and this is by issuance of a certificate of title by the Courts of law.

### **Whether the 2<sup>nd</sup> Respondent should vacate the Applicant’s caveat**

It was the Applicant’s case that he lodged a caveat on the land Register for the purpose of protecting his interest, and that the land is not encumbered. According to Annexure G, and H the Applicant lodged a caveat on the land on the 14<sup>th</sup> March 2017 under instrument No.00118768.

Section 139 Registration of Titles authorizes any person who claims an interest in land under the Act to lodge a Caveat with the Registrar forbidding the registration of any person from transacting in the same to the prejudice of the Caveator's interests or upon consent of the Caveator. According to the Applicant, his interest in the suit land is one of a purchaser and this is clearly so stated in the sale agreement that he attached to his affidavit.

Removal of such caveat has been provided for under Section 145 of the Registration of Titles Act and such application has to be made to the registrar, it provides that:-

*'When a caveat has been withdrawn under section 139, or has lapsed under section 140, or has otherwise ceased to affect the lands or any interest in the lands in respect of which it was originally lodged, the registrar shall cause the caveat to be removed from the Register Book and shall enter in the margin of the original entry of the caveat the date of that removal'.*

As noted earlier, the Applicant has no proof to the fact that he applied for removal of his caveat from the Register book, neither does he have proof for the alleged application of grant of a vesting order, relying on the authority of Mutyaba versus Kayimbye & Anor (*supra*), let the Applicant apply for the said orders to the commissioner, and if he fails to do so, they will be automatically granted.

The Applicant needed to first exhaust the window of applying to the Registrar before coming to Court. Given the facts alluded to above, this Court finds it unwise to grant the orders. It is advised that the Applicant first applies to the Registrar and provides evidence of the same before the Court can grant the application.

Each party to bear its own costs.

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Henry I. Kawesa

**JUDGE**

29/08/19

29/08/19:

Kiryowa Jonathan for the Applicant present.

Applicant absent.

Court:

Ruling delivered in the presence of Mr. Kiryowa Jonathan.

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Henry I. Kawesa

**JUDGE**

29/08/19