

5 This application is supported by an affidavit sworn by the applicant, **Ms. Namazzi Justine**. The grounds of the application are laid out in the affidavit in support of the application but briefly they are the following;

- 10 a. That on 15th September 2012, the applicant entered into a sale agreement with the respondent for the purchase of the suit land for a total purchase price of Ugx 280,000,000 (Uganda Shillings two hundred and eighty million shillings only) which was paid to the vendor in full.
- 15 b. That upon execution the sale agreement and payment of the purchase price, the vendor handed over all the documents in respect of the property to the purchaser including the duplicate certificate of title, duly signed transfer forms and his passport photos however, the transfer forms and photographs were misplaced.
- c. That the applicant has since taken full possession of the suit land and is utilizing the same for various projects.
- 20 d. That when the applicant started the process of transferring the land into her names, the respondent could not be located to provide the applicant with fresh transfer forms and photographs and that all attempts to locate the 1st respondent have been in vain.

The 2nd respondent who was added by an order of court filed an affidavit in reply deposed by **Mr. Ssekabira Moses** wherein it was deposed that the applicant shall be put to strict proof to confirm the averments made in the affidavit in reply.

Representation

During the hearing of the application, the applicant was represented by **Mr. Sakwa Perez Mausso** while the respondent was represented by **Mr. Ssekito Moses and Ms. Arinaitwe Sharon**.

5 Decision

I shall firstly determine the preliminary point of law raised by Counsel for the 2nd respondent before proceeding to the merits of this application. It is Counsel for the 2nd respondent's submission that the instant application is improper, incompetent and an abuse of court process since it was brought using the wrong procedure.

10 Counsel for the 2nd respondent went ahead to submit that before an applicant invokes the inherent jurisdiction of this court for a vesting order, he/ she must have applied first for a vesting order to the Commissioner Land Registration who must for some reason have declined to exercise his or her power under Section 167 of the RTA.

15 It is counsel's argument that whereas the applicant contends that she sought the Commissioner Land Registration to make the said order, the office of the 2nd respondent does not have any knowledge of the said averment.

Section 167 of the Registration of Titles Act, Cap 230 (hereinafter referred to as RTA) provides that;

20 *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 representative, but that a transfer has never been executed by the vendor and cannot be obtained by reason that*
25 *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 addition 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*

5 by Section 166 in the case of the vesting order 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 on the underlined)

I am live to the fact that **Section 167 of the Registration of Titles Act** makes it a
10 procedural prerequisite in applications of this nature for the Commissioner Land
Registration to be the first point of reference before resorting to applying to the High
Court. (*See Ronald Oine versus Commissioner Land Registration Miscellaneous
Cause No. 90 of 2013*)

In paragraph 10 the affidavit in support of the application, the applicant deposed that
15 she moved to the Officer of the Commissioner Land Registration to make a vesting
order in her favour, however, the same was denied and the office insisted that the
applicant gets a Court Order. However, the applicant did not attach any documentary
evidence to prove these depositions.

In the case of *Aida Najjemba versus Ester Mpagi, Court of Appeal Civil Appeal No.*
20 *74 of 2005, Byamugisha JA*, observed that an application for a vesting order must
be made before the registrar of titles, however, the High Court has unlimited
jurisdiction in all matters. This case was concerned with the grant of a vesting order
where an application to the Commissioner for Land Registration was not made.
However, the facts in this case are distinguishable from the instant ones.

25 In *Aida Najjemba's case, Byamugisha JA* observed that the Commissioner Land
Registration on 16th August 2004 wrote to counsel for the appellant suggesting to
them the option of obtaining a vesting order from court and counsel seemed to have
accepted the said advice when he filed the application in High Court. In the same
letter, the Commissioner Land Registration informed Counsel that no transfer in

5 favour of the respondent and her late husband could be traced and the instrument
number under which their registration was purportedly effected related to a different
land transaction. The loss of the transfer instrument and the use of an instrument of
a different land transaction to register the respondent and her late husband raise
some suspicion but it cannot be evidence of fraud on her part. In any case, the
10 respondent was not responsible for safe keeping of documents in the land registry
and cannot be blamed for the loss of the transfer instrument. I consider this to have
been a unique case in which the vendor had sold the property and received the whole
of the purchase price and the purchaser was in possession with the full knowledge
and consent of the vendor. The vendor was dead and no representative was available
15 to sign fresh transfer forms. The Learned judge was right to grant a vesting order
under Section 167.

It would appear that in the Najjemba case, it is the Commissioner Land Registration who suggested that the option of obtaining a vesting order court, which in my view translates into the respondent having first applied to the Commissioner Land
20 Registration before invoking the original jurisdiction of the High Court in accordance with the directives of Section 167 (supra).

I am alive to the fact that this court is vested with unlimited original jurisdiction in handling matters of this nature (See **Article 139 (1) of the 1995 Constitution of Uganda** and **Section 14 of the Judicature Act**), however, the applicant completely
25 disregarded the procedural directives of Section 167 of the RTA by not first applying to the Registrar of titles for a vesting order which is unacceptable and a total disregard of the intention of parliament of the said provision. (See **Mutyaba Tom versus James Kayimbye Sebinene Musajjalumbwa MC 40 of 2018**).

5 I shall now proceed to the main issue for determination which is *whether the application discloses grounds that justify the granting of a vesting order to the applicant*. In the case of **Maria Goretti Musimenta versus Commissioner for Land Registration H.C.M.C No. 62 of 2019**, the court laid out the conditions which ought to be satisfied for the grant of a vesting order and these are;

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

20 ***Condition 1: land registered under the RTA and the full purchase price must have been paid***

It is trite that a certificate of title is conclusive proof that the land was brought under the Registration of Titles Act. **(See Section 59 of the RTA)**. In the instant case, the applicant deposed in paragraphs 2,3 and 4 that she purchased the suit land from the 1st respondent whom she paid the full purchase price after which the 1st respondent

25 handed over the duplicate certificate of title. These depositions were confirmed by Annextures A and B as attached to the Affidavit in support and the said documentation was not refuted by the 2nd respondent. Therefore, this condition has been met.

5 ***Condition 2 and 3: Possession of the land and that vendor has acquiesced the possession***

In paragraph 5 of the affidavit in support, the applicant deposed that after execution of the sale agreement, she took possession of the suit land which she is using for various projects. According to the photographs annexed as C 1 and 2 to the affidavit
10 in support of the application, there is a scatter of banana plants on the suit land, but majority of land is bushy. The applicant did not adduce any evidence in proof of the projects being conducted on the suit land as deposed in the affidavit in support of the application.

Furthermore, I am in agreement with Counsel for the 2nd respondent that the
15 applicant has not proved actual possession of the suit land.

Condition 4: The transfer of property has not been executed because the vendor is dead or residing outside the jurisdiction or cannot be found.

The applicant deposed in paragraphs 6 to 9 of the affidavit in support of the application that having misplaced the duly executed and signed transfer forms, the
20 applicant attempted to locate the vendor however, he could not be located. Furthermore, the applicant averred that the applicant's known telephone number 0772661089 is permanently switched off and that all efforts to locate the vendor have been futile.

On the 18th day of April 2024, I ordered the Court annexed Process Server to call the
25 vendor's telephone number so as to confirm the depositions of the applicant. According to Mr. Kojjo Noah's affidavit of service dated 19th April 2024 under paragraphs 3 to 7, he deposed that on 18th April 2024, at 2:15 pm, he called telephone the 1st respondent's known telephone number 0772661089 as per the affidavit in support of the application and the said telephone number was available. He

5 proceeded to depose that he introduced himself and the receiver of the said telephone number confirmed that he was Mr. Nuwagaba Elikardi Julius. It was further deposed that the 1st respondent stated he knew the applicant and that his telephone number is very much available and active. This is evidence and proof that the vendor can be located by the applicant hence the assertion that the 1st respondent cannot be located
10 is unmerited.

Secondly, it is quite outrageous that the applicant who claims to have misplaced the transfer instruments that she received in 2012 after executing the sale agreement, almost 12 years later has never recorded a formal complaint to police to that effect. Therefore, it is the finding of this court that the vendor of the said land and the current
15 registered proprietor of land comprised in Kyadondo Block 195, plot 1099 situated at Kyanja, Nakawa Division, Mr. Nuwagaba Elikardi Julius is available and can be located and accessed on his telephone number 0772661089 and as such this condition has not been satisfied.

In conclusion, it is the finding of this court that the 1st respondent Mr. Nuwagaba
20 Elikardi Julius can be located and he is available and there is no requirement for a vesting order. In the premises, I order as follows;

- a. This application is dismissed.
- b. Costs to the 2nd respondent

I so order.

25

5 Ruling delivered at High Court- Land Division via ECCMIS this **19th day of April 2024.**

A handwritten signature in blue ink, appearing to read 'Immaculate Busingye Byaruhanga', written over a faint circular stamp.

Immaculate Busingye Byaruhanga

10 **Judge**