

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MPIGI
MISC. CAUSE NO. 0017 OF 2020

DDUNGU CHARLES =====APPLICANT

VERSUS

COMMISSIONER FOR LAND REGISTRATION =====RESPONDENT

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BEFORE: HONOURABLE JUSTICE OYUKO ANTHONY OJOK

RULING

This Application was brought by Notice of Motion supported by an affidavit of DdunguCharles under Section 167 of the Registration of Titles Act , Order 52 rules 1 & 2 and Section 98 of the Civil Procedure Act seeking for orders ;

- 1) Vesting orders be issued
- 2) Costs be provided for.

Representation

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The applicant was represented by Counsel Sabakaki but the respondent was not represented.

Submission

Counsel for the applicant submitted orally

The grounds are supported by the affidavit of DdunguCharles and the supplementary affidavit of MugerwaSulaiman Mubarak.

It is averred by the Applicant that I know the Registered Proprietor of the land comprised in Mawokota Block 248 Plot 7 land at Kasinde, Mpigi District, belonging to Andrea Kapere. That the applicant purchased the suit property from Mugerwa Mubarak vide the sale agreement dated 5th June, 2015 who had purchased the same from the late Andrea Kapere and immediately took possession.

That the late Andrea Kapere before his death had handed over the Certificate of Title of the suit property to Mugerwa Mubarak who in turn handed over to the Applicant.

Unfortunately, the certificate of title was not handed over to the Applicant because it got lost from the bank but Mubarak swore a statutory declaration and produced a report from Police.

Further the Applicant was informed and produced a death Certificate as proof that Andrea Kapere died and as such he couldn't give him another transfer form.

It was also his evidence that he tried to apply to the Respondent to have the suit land vested in him but all in vain.

The Respondent was served but never filed the affidavit in reply.

Counsel properly directed me on Section 167 Registration of Titles Act Cap 230 as the applicable law in application with this nature.

“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 is paid and that all those claiming under the purchaser have entered and taken possession under the purchase and that entry and possession have been acquiesced by the vendor or his or her representatives, but that a transfer has never been executed by the vendor and can't be obtained by reason that the vendor is dead or is residing out of the jurisdiction or

can't be found. The Registrar may make a vesting order in the premises and may include in the order a direction for payment of such additional fee in respect of assurance with title as he or she may think fit and the Registrar upon the payment of the additional fee, if any shall effect the Registration directly to be made .

S. 166 Registration of titles Act in case of a vesting order mentioned there and the effecting or the omission to effect that registration shall be attended by the same results as declared by S. 166 RTA in respect of the vesting order mentioned there.”

Counsel for the Applicant cited the case of Aida Najembavs Ester Mpagi CCA NO. 10 74/2005 wherein court gave some guidance as to the conditions which ought to be satisfied under the above section before the registrar can exercise his or her powers these are:

- 1) That the land must be registered under the Registration of titles act and the purchaser must have paid all the purchase price to the vendor.
- 2) That the purchaser or those claiming under him or her have taken possession of the suit land.
- 3) That the purchaser has entered the land and the entry has been acquired by the vendor or his or her representative.
- 4) That the transfer of the property hasn't been executed because the vendor is 20 dead or residing out of the jurisdiction or can't be found.

Resolution

All these conditions were satisfied by the Applicant.

It is trite law that before an applicant invokes the inherent jurisdiction of court under section 98 Civil Procedure Act Cap 71, in applications of this nature he/she must have applied first for a vesting order to the Commissioner for land

Registration/Registrar, who for some reason must have declined to exercise his or her powers under section 167 of RTA Cap 230, See **Aida Najjemba versus Ester Mpgi (supra)**.

It was not disputed that the Respondent declined to vest the suit land in the names of the applicant, upon application. I am therefore satisfied that the conditions precedent for invocation of the courts inherent Jurisdiction has been satisfied by this application.

Turning now to the conditions above having carefully looked at the whole application, I am satisfied of no doubt with all the above conditions. In the circumstances I entirely agree with the Applicants counsel that this application ought to be granted as prayed. I therefore order as follows:

- a) That the respondent vest land comprised in private Mailo block 246 Plot 7 land situated at Kasinde Mpgi District
- b) That the Applicant meets all the fees necessary for vesting the suit land into his names.
- c) The applicant meets costs of this application.

I so order.

Oyuko Anthony Ojok

Judge

10/March, 2021