

IN THE HIGH COURT OF UGANDA, KAMPALA

(LAND DIVISION.)

MISCELLANEOUS CAUSE NO.0079

NANTEZA ELIZABETHAPPLICANT

VERSUS

COMMISSIONER, LAND REGISTRATION.....RESPONDENT

Before: Lady Justice Alexandra Nkonge Rugadya

RULING:

Introduction:

The applicant Ms Elizabeth Nanteza seeks an order of mandamus against the Commissioner, Land registration, the respondent, to compel the office to complete the process of issuing a special certificate of title to the applicant; and for costs of this application to be provided for.

Grounds of the application;

The grounds are as laid out in detail in the affidavit of the applicant wherein she states she is the administrator of the estate of the late Hannington Bukulu Kiwanuka Mukasa who was and still is the registered as the proprietor of the land comprised in ***Kyadondo Block 258, plot 1 land at Bulinguge Island (suit land).***

That as the administrator of the deceased, the applicant applied to the respondent to issue a special certificate of title and have the same issued into her names as the surviving administrator of the estate. Furthermore, that the applicant accomplished all that was required of her but without justification the respondent refused to complete the process of issuing the special certificate of title.

The application was duly served to the respondent who however did not file any response, thus leaving the application unopposed.

The applicant was represented by ***M/S S.K. Kiiza & Co. Advocates.***



Analysis of the law:

The issue in this case is whether or not the applicant is entitled to the merits sought in this application.

Generally, where there is failure by a party to turn up and defend a suit partial responsibility may be imputed for any of the actions which may have been taken contrary to the law. That principle is borrowed from the case of: **FJ K Zaabwe vs. Orient Bank & 5 O'rs SCCA No. 4 of 2006**).

By virtue of **section 101 (1) of Evidence Act, Cap. 6**, where a party desires court to give judgment to any legal right or liability depending on the existence of any facts it asserts, it must prove that those facts exist. (**George William Kakoma v Attorney General [2010] HCB 1 at page 78**). That principle equally applies in the present case where the application is unopposed.

The applicant through her counsel filed written submissions, details of which can be found on record and which I shall take into consideration in dealing with this matter.

By virtue of **section 37 of the Judicature Act, Cap.13**, this court may unconditionally or on such terms and conditions as it sees fit grant an order of mandamus in all cases in which it appears to be just and convenient to do so.

It is a prerogative order available upon application for judicial review from the High Court, tribunal or other public body, to perform a specific public duty relating to its responsibilities. (**See: Oxford's Dictionary of law, Oxford University Press 2009, 7th edition, p. 340.**)

The order is applicable to the enforcement of duties by public administrative bodies. Counsel submitted, and I agree, that the procedure of judicial review by which the order of mandamus is sought is quite instructive given the intrinsic nature of that remedy.

Thus in order for one to obtain a writ of mandamus the applicant has to demonstrate that a clear legal right to applicant exists as well as a corresponding duty in the respondent; that some specific act or thing that the law requires that particular officer to do has been omitted to be done; there is lack of any alternative or the existing alternative is inconvenient, less beneficial, less effective or totally ineffective. (**See Southern Range Nyanza Ltd vs Attorney General & 2 others: Miscellaneous Application No. 2157 of 2016**).

The duty to perform an act ought to be indisputable and plainly defined as mandamus. (**See: Nampango and Anor vs Attorney General, HCCMA 0048/2009.**), as a court would indeed be disinclined to enforce doubtful rights.

Analysis of the evidence:

In the instant case, it is the applicant's uncontroverted evidence that she is the sole surviving administrator of the estate of the late Hannington Bukulu Kiwanuka Mukasa, who is currently the registered proprietor of the suit land (***Refer to the statement of search, as at 26th October, 2020: Annexure C'***).

The applicant also attached to her application a copy of the grant of letters of administration, ***Annexure A'***, issued vide **AC No. 480 of 1986**, on 10th February, 1986, appointing her together Mrs. Penelope Nakato Mukasa, the widow of the deceased and Mr. Ham Mukasa (son of the deceased) as the administrators of the estate.

The application further presented copies of death certificates of the her two co-administrators, ***Annexures B1 and B2*** which respectively indicate that the widow had passed away on 11th February, 2000 while Mr. Ham Mukasa Kibuuka had passed on earlier, on 17th April, 1995.

Section 273 of Succession Act, Cap. 162 stipulates that upon the death of one or more of several administrators, all the power of the office become vested in the survivor or survivors.

In **section 180**, same Act, an administrator of a deceased person is his or her legal representative for all purposes, and all the property of the deceased vests in him/her as such. In essence therefore, all the beneficial interest passes to him/her and all assets are then held by the administrator on bare trust for the beneficiaries.

Furthermore, **section 70 of the RTA** stipulates:

If the duplicate certificate of title is lost or destroyed... ... 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 land to the best of the deponent's knowledge, information and belief; and the registrar if satisfied as to the truth of the statutory declaration and the bonafides of the transaction may issue to the proprietor, a special certificate of title to the land, which special certificate shall contain an exact copy of the certificate of title in the register book and every memorandum and endorsement on it , and shall state why the special certificate is issued; and the registrar shall at the same time enter in the register book notice of the issuing of the special certificate and the date of its issuance and why it was issued; and the special certificate shall be available for all purposes and uses for which the duplicate certificate of title so lost or destroyed or obliterated would have been available, and shall be equally valid with the duplicate certificate of title to all intents; but the registrar



before issuing a special certificate always shall give at the applicant's expense at least one month's notice in the gazette of his or her intention to do so.

The above provision is clear and requires no further elaboration.

5 The applicant in this case also submitted to the respondent a certified copy of the letters of administration together with her application for a special certificate of title as the duplicate could not be traced, following the death of the former registered owner, and also paid the requisite fees. ***(Annexure D')***.

10 In response to her application, the office of the respondent on 7th January, 2020 issued a notice to the Managing Director Uganda Printing and Publishing Corporation requesting the same to be published in the Uganda Gazette. ***(Annexure E')***.

Annexure F' was sufficient proof that on 10th January, 2020 the notice was duly published in the Gazette; returned to the respondent's office on 20th January, 2020; and that any person who had any issue concerning this land had had a period of more than one year to challenge the decision, but none came up to do so.

15 Counsel further referred to the requirement under ***section 134 of the RTA***, that the office of the respondent, upon receipt of the certified copy of the grant, must enter in the register book and on duplicate certificate the name of the administrator of the estate, and do all other acts as specified, which it had however refused to do.

20 As per ***section 70 of the RTA***, the registrar is required, if satisfied as to the truth of the statutory declaration and the *bonafides* of the transaction ^{to} may issue to the proprietor, a special certificate of title to the land.

25 Thus where he/she is to reject the application for any reason, the applicant is entitled to an explanation in writing giving those reasons. There is nothing on court record to show what reasons the respondent may have had for the failure or refusal to take the appropriate actions and complete the processes, as required of it under the provisions of law specified above.

In the circumstances as presented by the applicant, a clear and undisputed right exists in favor of the applicant, acknowledged as the surviving administrator of the estate. She is therefore not only entitled to being registered as the proprietor of the suit land but also entitled to be issued with a special certificate of title.

30 Since there is no other viable alternative available to the applicant, it is only fair and just in those circumstances that court exercises its discretion, as I now hereby do, under ***section 37 of the Judicature Act*** to allow the application and grant the orders sought, and in the terms below:



The writ of mandamus shall issue to compel the respondent to perform its statutory duty to wit:

a). note the applicant on certificate of title as the administrator of the estate of the late Hannington Bukulu Kiwanuka Mukasa; and

b) issue the applicant with a special certificate of title in respect of the suit land;

5 The respondent shall also meet the costs of this application.



Alexandra Nkonge Rugadya

Judge

16th August, 2021

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Delivered via email


16/8/2021.