

THE REPUBLIC OF UGANDA

10

MISCELLANEOUS CAUSE NO. 155 OF 2020

15

VERSUS

2. COMMISSIONER LAND REGISTRATION ::::::::::::::: RESPONDENTS

**BEFORE: HON. LADY JUSTICE IMMACULATE BUSINGYE
BYARUHANGA**

RULING

This Application was brought by way of Notice of Motion under Article 139(1) of the Constitution, Section 14 of the Judicature Act, Section 98 of the Civil Procedure Act, Sections 167, 70 & 71 of the Registration of Titles Act (RTA) and Order 52 Rules 1 & 2 of the Civil Procedure Rules seeking the following orders:-

- a) A vesting order be granted in favour of the Applicant in respect of land/property situate at Plot 37, Martin Road LRV 116, Folio 7.
- 30 b) The 1st Respondent issues a Certificate of Purchase to the Applicant.

5

c) The 2nd Respondent enters the Applicant's name in the Register Book in respect of the suit property.

d) Costs for this Application be provided for.

10

The Application is based on the following grounds:-

1) The suit property is registered under the provisions of the Registration of Titles Act, Cap 230.

15 2) The Applicant purchased the said property from the Departed Asian Property Custodian Board under MIN 14: DAPCB/2017.

3) The Applicant is in possession of the said property.

20 4) It is now three (03) years ever since the Applicant purchased the said property but the 1st Respondent has failed and/ or refused to issue the Applicant with a Certificate of Purchase up-to-date despite several demands.

25 5) The transfer of the said property in favour of the Applicant and development of the same has not been possible without a Certificate of Purchase issued by the 1st Respondent to the Applicant.

6) This Honourable Court has unlimited original jurisdiction in all matters including the granting of all the above sought orders.

30

5 7) The Application is brought in good faith and the Respondents will not suffer any injustice, if this Application is granted.

8) In the interest of equity and substantive justice, this Application be allowed and/or granted by this Honourable Court.

10

The Application is supported by the affidavit of Muyambi Simon who states what is in the grounds and attaches receipts for payment under **DAPCB Nos. 51916** dated **9th November 2018** for *Ug. Shs. 120,000,000/= (One hundred twenty million shillings only)* and **No. 51915** dated **29th January 2018** for a sum of *Ug. Shs. 42,400,000/= (Forty-two million four hundred thousand shillings only)* as **Annextures A & B**. The Valuation Report dated 10th November 2017 is attached as **Annexure “C”**. The Valuation Report is by the Ministry of Lands, Housing & Urban Development. **Annexure D** is a letter from the Applicant addressed to the Minister of Finance, Planning & Economic Development dated **28th November 2019** requesting for a Certificate of Purchase for Plot 37 Martin Road. The Notice of Intention to Sue is attached as **Annexure “E”**.

15
20

The Respondents do not have affidavits in reply on record.

There is an affidavit of service on record received by Land Division Registry on 29th April 2021. It is deposed by Kuluuma Malik Yiga a Process Server with Kafeero & Co. Advocates. According to Paragraphs 3 & 4, the Attorney General (1st Respondent) was served on 7th April 2021 and a stamp of Ministry of Justice and Constitutional Affairs was appended on the Notice of Motion served. The affidavit of the said Process Server, does not indicate anywhere that the 2nd Respondent (Commissioner Land Registration) was served. Therefore, the 2nd Respondent was not served at all and there is no way the said office could have dreamt about the current Application.

25
30

5 Regarding procedure, this is a matter where an Application for a vesting order was brought with an Application for Certificate of Purchase.

Regarding the procedure for the Certificate of Purchase, Counsel for the Applicant should have filed an ordinary plant against the Attorney General. The minutes of the Custodian Board were not even attached to the affidavit in support of the Application.

10 Reference to a minute is not evidence. Counsel for the Applicant ought to have filed an ordinary plaint and prayed for a Certificate of Purchase to be issued. The Plaintiff would have led evidence showing how he entered into a transaction with the Custodian Board. Affidavit evidence without minutes of the Custodian Board would not suffice in this matter.

15 Regarding the prayer for a vesting order, it should be noted that the conditions for granting a vesting order were set out by the Court of Appeal in the case of **Aida Najjemba versus Ester Mpagi Civil Appeal No. 74 of 2005** as follows: -

1) The land must be registered under the provisions of the Registration of Titles Act and the purchaser must have paid the whole of the price to the vendor.

20

2) The Purchaser or those claiming under him or her have taken possession of the purchased land.

25 3) The entry into possession by the purchaser has been acquiesced by the vendor or his or her representative.

4) The transfer of the property has not been executed because the vendor is dead or residing out of jurisdiction or he/she cannot be found.

5 In the instant Application and in respect of the 1st condition, there is no evidence as to
what amounts to the purchase price. The affidavit of the Applicants in Annexures A &
B shows that he paid *Ug. Shs. 162,000,000/= (One hundred sixty-two million shillings*
only) to Custodian Board but there is no clear assessment. This condition is not properly
met. The land is under the operation of the RTA but it is difficult to determine the
10 purchase price without attaching the assessment or agreement in respect of the purchase
price.

The second condition of possession has been proved and equally the 3rd one.

Regarding the last condition which is proof that vendor is dead, residing out of
jurisdiction or cannot be found, this is equally lacking Custodian Board operates under
15 the Ministry of Finance, Planning & Economic Development. That is why the Attorney
is a party in this matter. The vendor is available and there is no evidence indicating that
the vendor cannot be located.

The Applicant has failed to meet the conditions outlined under **Section 167** of the RTA
for the vesting order and the Application is **dismissed**.

20 Each party to bear their own costs since there were no affidavits in reply by the
Respondents.

25

.....
IMMACULATE BUSINGYE BYARUHANGA
JUDGE
27/04/2021

5

10

15