

**Kayima v Commissioner Land Registration
(Miscellaneous Cause 343 of 2023) [2024]
UGHCLD 273 (22 November 2024)**

[2024] UGHCLD 273

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- i. That on the 8th day of July 2010, through my agent at the time, I entered into a land purchase agreement with Andrew SB Lubega who was represented by a one Lubega Fred.
- ii. That under the said land purchase agreement, Andrew SB Lubega sold to me properties comprised in Busiro Block 378 Plots 998,999, 1000 and 1001 land at Katale at a total consideration of Ug shs 49,000,000/= (Uganda shillings Forty-nine million only).
- iii. That upon full payment of the purchase price as per the agreement, I was handed the duplicate certificates of title for all the said properties and their respective transfer forms including for property comprised in Busiro Block 378 Plot 1000 land at Katale.
- iv. That following the said hand over of the title deeds for the properties I had purchased. I unequivocally took possession of the properties since 2010 to date and I have since enjoyed uninterrupted possession of the same and further disposed off some. Though some plots were disposed of, I have remained in possession of property comprised in Busiro Block 378 Plot 1000 land at Katale and in possession of the respective title deed still in the names of Andrew SB Lubega as the legal owner.
- v. That following the considerable long period of time that has passed without changing ownership of the property comprised in

Busiro Block 378 Plot 1000 land at Katale, I unintentionally lost the signed transfer form for the said land and remained with a photocopy of the same.

- vi. That following my desire to have the said property registered in my names as the legal owner, I have tried to look for Andrew SB Lubega at his last known physical address to avail me with fresh signed transfer forms but all my efforts have been futile. I don't know any or have any contact of Andrew SB Lubega's relatives to inquire or confirm his whereabouts.
- vii. That having purchased property comprised in Busiro Block 378 Plot 1000 land at Katale, gotten possession of both the title deed and the land itself and in the absence of Andrew SB Lubega to avail me fresh transfer forms, I have been advised by my lawyers of M/s Bluebell Legal Advocates whose advice I verily belief to be true that this Honorable Court is vested with unlimited powers to order the respondent to effect the said transfer into my names.

RESPONDENT'S EVIDENCE

- 3. The respondent opposed this application by filing an affidavit in reply deposed by **SSEKITTO MOSES**, a Registrar of titles working with the Respondent's office and briefly states as below;
- I. That this application is improper, incompetent and an abuse of court process as it has been brought using a wrong procedure.

- II. That perusal of the Register reveals that land comprised in Busiro Block 378 Plot 1000 is indeed registered in the names of Andrew. S. B. Lubega of P. O. Box 3235 Kampala vide instrument number KLA457213 on the 26.10, and there are no incumbrances whatsoever.
- III. That in reply to paragraph 2 of the affidavit in support of the application, the applicant states that he is the lawful owner of the suit land as he purchased the same from Andrew S B Lubega who was represented by Lubega Fred and was also availed with a duplicate certificate of title, but he will be put to strict proof of the same.
- IV. The Applicant just makes an averment that he is in physical possession of the suit land without attaching all the exhaustive proof of the alleged possession on the suit land and shall therefore be put to strict proof of the said averment.
- V. That the respondent's office has never received any application of a vesting order from the applicant, it is discovered that this application has no merits as the applicant has not sufficiently exhausted all the conditions for the grant of a vesting order.
- VI. That courts of law and the office of the commissioner land registration cannot be seen to deal in land without the consent of the rightful owners thereof.

Representation

4. The applicant was represented by Counsel Kazibwe Wilberforce of M/s Bluebell Legal Advocates and the respondent was represented by M/s Nakaziba Zurah of the Office of the Commissioner for land Registration.

Issue, Resolution and determination.

Whether the applicant has established sufficient grounds to be issued a vesting order in the suit property.

5 5. Section 167(now section 151 of the revised laws) of the Registration of titles Act provides for; *Power of commissioner to make a vesting order in cases of completed purchase. If it is proved to the satisfaction of the Commissioner 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 her representatives, but that a transfer has never 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 and may include in the order a direction for the payment of such an additional 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 by section 166 in the case of vesting orders 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.

- 6. In brief, Section 167 of Registration of Titles Act empowers a Registrar of titles to make a vesting order in cases of a completed purchase, however the following conditions must be fulfilled;
- i. The land must be registered under the Registration of titles Act and the purchaser must have paid the whole of the price to the vendor.
- ii. The purchaser or those claiming under him/her have taken possession of the purchased land.
- iii. The entry into possession by the purchaser has been acquiesced by the vendor or his/her representative.
- iv. The transfer of the property has not been executed because the vendor is dead, or is residing out of jurisdiction, or cannot be found.
- 7. The same principles were enunciated in a plethora of authorities including but not limited to **Re Ivan Mutaka (1980) HCB 27, Aida Najjemba v Esther Mpagi CA No. 74 of 2005, Michael Kaggwa v Paulina Nampiso OS No.11 of 2012** and other authorities.
- 8. The Respondent raised a preliminary objection that this application is improper, incompetent and an abuse of court process as it has been brought using a wrong procedure and the Respondent's office has never received any application of a vesting order from the Applicant.
- 9. The Applicant has not adduced any proof to show that he made an application to the office of the Respondent. Section 167 of the Registration of Titles Act vests the power to deal with land in such circumstances in the office of the Registrar of titles and it is only after he has declined, that one invokes the inherent powers of Court to grant such orders.
- 10. This position was well articulated in **Ronald One V Commissioner for land Registration MC No. 90 of 2013 wherein Hon. Mr. Justice Bashaija K. Andrew** stated "I must add that it ought to be a condition that the application must be made to the Registrar/Commissioner for land Registration in the first instance, who for some reason declines to exercise the powers conferred upon him or her under Section 167 (Supra) before the Applicant can move court.
- 11. Therefore, Court upholds the preliminary objection raised by the Respondent and I find no need to delve into the merits of this application as the same is immature and incompetent before this Honorable Court.

In the circumstances this application fails and the same is here by dismissed with no order as to costs.

I SO ORDER.

NALUZZE AISHA BATALA

Ag. JUDGE

22nd /11/2024.

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2024

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