

UGANDA / JUDGMENT

Kisuule v Commissioner Land Registration (Miscellaneous Cause No. 119 of 2016) [2017] UGHCLD 13 (15 February 2017)

[2017] UGHCLD 13

COURT

HC: Land Division (Uganda)

BEFORE

Bashaija, J

CASE / FILE NUMBER

Miscellaneous Cause No. 119 of 2016

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(LAND DIVISION)

MISCELLANEOUS CAUSE NO. 119 OF 2016

HARRIET KISUULE ::::::::::::::::::::::::::::::::::: APPLICANT

VERSUS

COMMISSIONER LAND REGISTRATION ::::::::::::::::::: RESPONDENT

BEFORE: HON MR. JUSTICE BASHAIJA K. ANDREW

R U L I N G:

Harriet Kisuule *(hereinafter referred to as the “Applicant”)* brought this application against the Commissioner for Land Registration *(hereinafter referred to as the “Respondent”)* under section 167 of the Registration of Titles Act, Cap. 239 (RTA); section 98 of the Civil Procedure Act, Cap. 71 (CPA); and Order 52 rr.1 and 3 of Civil Procedure Rules, SI 71-1 (CPR); seeking orders that;

1. *A vesting order be issued directing the Commissioner for Land Registration to transfer property comprised in Block 245 Plot 112 at Kisugu Kampala into the names of the Applicant Harriet Kisuule as legal owner thereof.*
2. *Costs of the application be provided for.*

The grounds of the application are set out in the notice of motion and amplified in the affidavit in support thereof sworn by the Applicant. In the main, she states that she is currently the equitable owner of land comprised in Block 245 Plot 122 at Kisugu *(hereinafter referred to as the “suit land”)* having purchased the same from the registered proprietor, B. M Kalempera, who is the Administrator of the estate of the late B. M Kaggwa, under a sale agreement dated 1st April, 1989. She fully paid the consideration of Shs.450, 000= under the agreement of sale, and she has since been in possession of the suit land. The duplicate certificate of title and duly executed transfer forms were handed over to her by the vendor upon the purchase of the suit land.

The Applicant states that she misplaced the transfer forms that were signed for her by the vendor and that she has, despite a diligent search among her important documents, failed to trace the same. She has thus failed to obtain transfer of the land into her names by reason that the vendor cannot be traced at his known physical address in Kisugu to sign for her fresh transfer forms hence this application seeking the orders stated above.

From the facts as deponed by the Applicant in her affidavit in support of the grounds in the application, the following issues arise for determination;

1. ***Whether the Applicant meets the criteria under the law for a vesting order.***
2. ***Whether the Commissioner for Land Registration is the proper party in the application for a vesting order.***
3. ***What remedies are available to the parties?***

Resolution of the issues:

Issue No.1: Whether the Application meets the criteria under the law for a vesting order.

The conditions for granting a vesting order are set out under section 167 RTA (supra) which provides as follows;

“167. Power of registrar to make a vesting order in cases of completed purchase.

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 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 the 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.”

The Court of Appeal interpreted the above provisions in the case of ***Aida Najjemba v. Ester Mpagi, Civil Appeal No. 74 of 2005***. It was held that the four conditions must be satisfied before the Registrar can exercise his or her powers. They are that;

***(i)**The land must be registered under the RTA and the purchaser must have paid the whole of the purchase price to the vendor.*

***(ii)**The purchaser or those claiming under him or her have taken possession of the purchased land.*

***(iii)**The purchaser has entered the land and the entry has been acquiesced in by the vendor or his or 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.*

Regarding the first condition the land must be under the operation of the RTA, the court in ***Edward Babigumira vs. Commissioner for Land Registration, HC. Misc. Cause No. 76 of 2012,*** per Bossa J (as she then was) considered section 59 RTA and held to the effect that a certificate of title is conclusive proof that the land was brought under the RTA.

In this instant application it is evident from the Applicant's affidavit, in paragraph 2, that the suit land is effectively under the operation of the RTA as Block 245 Plot 112 Kisugu in the names of B. M Kalemera. The Applicant attached copy of a certificate of title and search statement to her affidavit; all of which reflect the particulars of the registration and prove that the suit land is under the RTA. I find that the condition that the suit land must be registered under the RTA was duly satisfied.

Regarding the condition that full purchase price must have been paid, it is also the uncontroverted evidence of the Applicant that as purchaser she fully paid the purchase price for the suit land. In paragraph 2 of her affidavit, she states that she duly purchased the suit lands from B. M Kalemera at a consideration of Shs. 450,000/= which she fully paid. She attached to her affidavit a copy of the sale agreement as ***Annexure "A"*** as proof of the purchase transaction. This condition too has been fulfilled

Regarding the issue of possession, the Applicant has shown that she took possession of the suit land soon after the execution of the sale agreement which is twenty seven years ago now. She has since constructed residential houses and rentable units thereon now being occupied by tenants. She attached as proof photographs of the said developments, and a letter of the LC1 Chairman of the area as ***Annexure "D" and "E"*** respectively. The Applicant also states that her possession was acquiesced by the vendor who has never objected to her occupation of the suit land for the last twenty seven years.

The final condition is that the transfer of the land has not been executed because the vendor is either dead or is residing out of jurisdiction and or cannot be found. The Applicant, in paragraph 3 the affidavit, further states that the vendor gave her a duplicate copy of the certificate of title for

the suit land with duly signed transfer forms which she lost. That all efforts to trace the vendor at his known physical address to sign fresh forms have proved futile, and although she is in possession of a certificate of title, the Applicant cannot have the transfer into her names effected without the vendor signing fresh transfer forms hence this application for the court to issue a vesting order vesting the suit land into the Applicant.

The reading of section 167 (supra) envisages the Registrar of Titles as the person/ office which under the law is clothed with the statutory authority to vest land in persons who fulfill the conditions stipulated thereunder. However, in the case of **Aida Najjemba vs. Esther Mpagi** (supra) it was held, inter alia, that even though an application for vesting order must be made to the Registrar of Titles, the High Court has unlimited jurisdiction, under Article 139 of the Constitution, in all matters and that the trial judge was right to grant a vesting order under section 167 RTA. From the facts sworn to in the affidavit of the Applicant and pursuant to the law applicable, this court is satisfied that the Applicant meets all the set conditions for the grant of a vesting order.

Issue No.2: Whether the Commissioner for Land Registration is the proper party in the application for a vesting order.

In the case of **Joyce Nabbosa vs. Mabidde Nasanayiri & 2 O'rs, HCMC No. 85 of 2009,** the court cited with approval the dictum from **Uganda Blanket Manufacturers vs. Chief Registrar of Titles**, **HCMA No. 55 of 1993**, and held that;

“In an application under section 185 (now Section 177) RTA, the Chief Registrar should be made the Respondent. It would be pointless to make a person from whom land has been recovered the Respondent.”

Under the 2004 amendment to the RTA, the Commissioner for Land Registration is in place a Chief Registrar of Titles: (See: Land (Amendment) Act, 2004 (Act No.1 of 2004) (Section 41). Thus having regard to the law, the proper Respondent in an application of this nature is the Commissioner of Land Registration.

Issue No.3: What remedies are available to the parties?

1. ***A vesting order doth issue vesting land comprised in Block 245 Plot 112 at Kisugu Kampala into the names of the Applicant Harriet Kisuule as registered owner.***
2. ***The Commissioner for Land Registration is ordered to transfer the suit land comprised in Block 245 Plot 112 at Kisugu Kampala into the names of the Applicant Harriet Kisuule as registered owner.***
3. ***The Applicant will bear costs of this application.***

BASHAIJA K. ANDREW

JUDGE.

15/02/2017.

Ms. Jackie Mukasa Counsel for the Applicant present.

All parties absent.

Mr. Godfrey Tumwikirize Court Clerk present.

Court: Ruling read in open Court.

BASHAIJA K. ANDREW

JUDGE.

15/02/2017.

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