

UGANDA / JUDGMENT

National Water & Sewarage Vs The Commissioner Land Registration (Misc. Application No. 039 of 2012) [2015] UGHCCD 131 (21 May 2015) [2015] UGHCCD 131

COURT

HC: Civil Division (Uganda)

BEFORE

Namundi, J

CASE / FILE NUMBER

Misc. Application No. 039 of 2012

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT JINJA

MISC. APPLICATION NO. 039 OF 2012

NATIONAL WATER & SEWERAGE CORPORATION:.....APPLICANT

VERSUS

THE COMMISSIONER, LAND REGISTRATION:.....RESPONDENT

BEFORE: THE HON. JUSTICE GODFREY NAMUNDI

RULING

This Application is brought under Section 14 of the Judicature Act, Section 188 of the Registration of Titles Act, Section 98 of the Civil Procedure Act and Order 52 Rules 1, 2 and 3 of the Civil Procedure Rules.

It has been brought exparte seeking orders that:

1. A Vesting Order be granted to the Applicant in respect of land comprised in LRV No. 667, Folio 23 Plot 6 Martin Road, Jinja.
2. Costs of the Application be provided for.

The grounds are contained in the application of Ms. Edith Kateete, the Manager Legal Services.

In summary they are that:

1. The deponent is the legal Manager in charge of the Corporation property.
2. That the suit property was purchased by the Applicant Corporation.
3. That the Applicant has been in occupation of the said property since 1972.
4. That the Applicant Corporation was unable to conclude the transfer of the property in its names because of the sudden death of the former Corporation Secretary Mr. Manoti who handled the transaction but did not pass on the relevant papers to anybody and the same have been lost.
5. That for a long time the Corporation has been trying to reach the registered proprietor in vain as his whereabouts are unknown.
6. That the Applicant has applied to the Ag. Commissioner for Land Registration for a Vesting Order in vain.
7. That it is in the interests of justice that the prayers in this Application be granted.

The affidavit in support gives details of the grounds. Therein it is deponed that the Applicant purchased the property in 1972.

That the former Corporation Secretary who handled the transaction died suddenly of a short illness without passing on any documents of acquisition. Any documents relating to the transfer at the land Registry and in the office cannot be traced. A search at the Land Registry reveals that the registered owner is Dr. John Chrysostom Kiyimba Kitto. Attempts to reach the said Dr. Kiyimba Kitto has been in vain. Further, that the said Title was mortgaged to the former Uganda Commercial Bank. An Inquiry with NPART reveals that they have no interest in the property.

An application to the Commissioner for Land Registration for a Vesting order was rejected on grounds that the registered owner is alive and available.

It has been submitted for the Applicant that the Court has the discretion to issue a Vesting Order.

That the Applicant has a substantial interest in the property and that efforts to secure the vendor have been in vain. The long occupation of the premises by the Applicant is clear interest of the Applicant's interest.

Reference was made to **Misc. Application No. 20/2009 – URA Vrs. Commissioner Uganda Land Commission**. Therein, the Court gave the following as conditions for grant of a Vesting Order:

1. There has been a sale of the registered property.
2. Sale price has been paid.
3. There has been occupation with knowledge of the seller.
4. The transfer cannot be affected due to the death or unavailability of the vendor.
5. The vendor is outside the country or cannot be traced.

In the instant case, the facts are that there is no evidence of sale. The person who is supposed to have handled the transaction died and there is no trace of any documentation in respect of the transaction.

Secondly, it appears that the registered proprietor is alive and can be traced. This Court cannot order for a Vesting Order well knowing the existence of the above facts.

The length of occupation alone is not enough to form a basis for the grant of the said order especially as it cannot be established that this has been with the knowledge of the owner.

If at all there was a transaction of sale as alleged, and the proprietor cannot be reached but there is information that he is available, the only option should have been the filing of an ordinary suit against the registered owner, seeking Court to order him to perform his part of the contract of sale if at all there was any. It would be very dangerous to grant the order sought well knowing that the Applicant has not exhausted all legal means to have the said owner compelled to come to Court. The Applicant should have sought to serve him by Substituted Service, through adverts in the Media.

In conclusion, I find that I cannot grant the order applied for on the basis of the scanty/lack of information in respect of the Application to justify the said grant. The Application is denied. The Applicant will meet their own costs.

Godfrey Namundi

JUDGE

21/05/2015

21/05/2015:

Osillo on brief for Turyakira

Both parties absent

Court: Ruling delivered.

Godfrey Namundi

JUDGE

21/05/2015

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Prepared on 13 October 2026 · Esheria