

**Oine v Commissioner Land Registration
(Miscellaneous Cause No. 90 of 2013)
[2014] UGHCLD 18 (11 April 2014)**

2. ***The Applicant purchases the suit property from the deceased's children vide a sale agreement dated 11th March, 2006 and immediately took possession and is still in possession of the same having paid the full purchase.***
3. ***The deceased's children handed over the Certificate of Title for the suit property but the said children's whereabouts are unknown and as such the said title has never been transferred into the Applicant's names as the purchaser.***
4. ***The Applicant's efforts to apply to the Registrar of Titles to vest the same into the names of the Applicant did not succeed as the Applicant was advised to apply for a vesting order from this honourable Court.***
5. ***This is a proper case where the High Court should exercise its inherent powers to order for the vesting of the suit property into the Applicant's names.***
6. ***That it is in the interest of justice that this application be granted.***

In his affidavit in support of the application the Applicant reiterates and amplifies the above grounds. He deposes that on 11/03/ 2006 he purchased land comprised in ***Block 1, Plot 244 Ankole, Sheema*** from the children of one Kagwisa to wit, John Tabaro, Patricia Tabaro, Stephen Tabaro Aruho and Florence Twinobusingye vide a sale agreement. A sale agreement was executed as evidenced in ***Annexures "A", "B" and "C" respectively**.***

The Applicant further states that at the time the sale was completed, the said Kagwisa the registered proprietor of the suit property was deceased, having passed away in 1993. Also that in 2006, having paid the full purchase price, the Certificate of Title was handed over to the Applicant by the deceased's children, and he immediately took possession of the suit property and has since been in possession. A copy of the Certificate of Title is also attached to the affidavit of the Applicant and marked ***Annexure "D".***

The Applicant also deposes that he has since been unable to obtain a transfer of the suit property into his names because the whereabouts of the said vendors is unknown. That sometime back, he approached the Respondent for a vesting order but was that the Applicant advised to apply for the same to this Court. He also states that the suit property should vest in him because it is just and equitable.

The Applicant was represented by Mr. Tumusiime Enos, who made submissions in respect to the application. I will not reproduce them but I will consider them simultaneously with the resolution of the only issue which is; ***"Whether this is a proper case for which a vesting order should be issued".***

The application is brought under ***Section 167 RTA*** which provides as follows;

***"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.”*

Mr. Tumusiime Enos in his submissions relied, among others, on the case of **Aida Najjemba v. Ester Mpagi, Civil Appeal No. 74 of 2005** in which the Court of Appeal interpreted **Section 167(supra)** and stated that four conditions which must be satisfied before the Registrar can exercise his or her powers are that;

1. **The land must be registered under the RTA and the purchaser must have paid the whole of the purchase price to the vendor.**
2. **The purchaser or those claiming under him or her have taken possession of the purchased land.**
3. **The purchaser has entered the land and the entry has been acquiesced in by the vendor or his or her representative.**
4. **The transfer of the property has not been executed because the vendor is dead or is residing out of jurisdiction or cannot be found.**

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. It is my view that section specifically provides for and empowers the “Registrar” to issue a vesting order, and therefore the Registrar is essentially the first point of reference before the court can be moved. I believe court grants vesting orders under its inherent power but not under **Section 167(supra)** because the provision only envisages the Registrar. It is therefore important that an applicant for a vesting order should unfailingly cite **Section 98 CPA** as the enabling provision, and **Section 167(supra)** only to demonstrate conditions for a vesting order. Counsel for the Applicant submitted that all the legally stipulated conditions do exist in this case to warrant issuing of the vesting order.

Regarding the first condition, the High Court in **Edward Babigumira v Commissioner for Land Registration, H. C. Misc. Cause No. 76 of 2012, per Bossa J** (as she then was) considered **Section 59 RTA** to the effect that a Certificate of Title is conclusive proof that the land was brought under the RTA. In the instant application the Applicant attached a copy of the Certificate of Title of the purchased land to his affidavit as **Annexure “D”**. **Section 59(supra)** stipulates, **inter alia**, that a Certificate of Title shall be received by court as conclusive evidence that the person named therein is the proprietor with power to dispose of the land described therein in accordance with

the provision. Given this position of the law and the evidence of the Applicant on the issue, I find that the condition that the purchased land is registered under the RTA was duly satisfied.

It is also the uncontroverted evidence of the Applicant that as purchaser he fully paid the purchase price for the land. This deposition is evident in paragraphs 2, 3 and 4 of the affidavit in support of the application that the Applicant purchased the land on 11/03/2006 and having fully paid the purchase price was handed the Certificate of Title and immediately took possession of the land and has been in possession since then. It would follow that the second condition was fully complied with by the Applicant.

It is also found for a fact that the Applicant's entry on to the purchased land was acquiesced in by the vendors. After the sale agreement *(Annexure "A" and B)* was executed the Applicant was handed vacant possession of the purchased land. This entirely invariably signified that the vendors had acquiesced in the possession by the Applicant. I find that that condition too was met.

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 Ground 3 of the application states the vendors handed over to him the Certificate of Title but that their whereabouts is unknown. The same is stated in paragraph 6 of the affidavit in support of the application. Mr. Tumusiime Enos submitted that the Applicant first made his application to the Commissioner for Land Registration, who advised them to obtain a court order first. Therefore, this renders this case a proper case for issuance of a vesting order.

I find that the Applicant has satisfied all the condition stipulated under ***Section 167 RTA*** for the issuance of a vesting order. The application is granted with orders that;

1. ***The Commissioner for Land Registration/ Registrar of Titles is hereby directed to vest land comprised in Block 1 Plot 244 land at Ankole, Sheema into the names of OINE RONALD, the Applicant.***
2. ***Each party will bear its own costs***

BASHAIJA K. ANDREW

JUDGE

11/04/2014.

Ruling is read in presence of Counsel for the Applicant Mr. Tumusiime Enos

Mr. Oine Ronald: Applicant.

Ms. Justine Namusoke Court Clerk.

BASHAIJA K. ANDREW

JUDGE

11/04/2014

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