

UGANDA / JUDGMENT

Ssekanabo & 2 Others v Commissioner Land Registration (Miscellaneous Cause 27 of 2023) [2024] UGHC 139 (11 March 2024) [2024] UGHC 139

COURT

High Court of Uganda

BEFORE

Nabakooza, J

CASE / FILE NUMBER

Miscellaneous Cause 27 of 2023

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA

HOLDEN AT MPIGI

MISCELLANEOUS CAUSE NO. 27 OF 2023

1. SSEKANABO GERALD RWEJEMA

2. LWANYAGA LAWRENCE

3. KIYIMBA ENOCK SEMPALA ::::::::::::::::::::

VERSES

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

BEFORE: HON. LADY JUSTICE NABAKOOZA FLAVIA

RULING

- 1. This an application for a vesting order brought under the relevant laws; Section 167 of the Registration of Titles Act Cap 230, Section 98 of the Civil Procedure Act, and Order 52 Rules 1 and 2 of the Civil Procedure Rules SI 71-1 seeking for orders that:

- a. A vesting order be issued in favor of the Applicants in respect of land comprised in Mawokota Block 85 Plot 64 where the 1st and 2nd Applicants are entitled to 5 acres and the 3rd Applicant is entitled to 4.9 acres.
- b. The Applicants be registered on the Land Title as tenants in common.
- c. A special certificate of title be issued in respect of land comprised in Mawokota Block 85 plot 64.
- d. The costs of the Application be borne by the Applicants.
- 2. The grounds of the Application are contained in the Affidavits in support of the application deponed by the 1st and 3rd Applicants (Ssekanabo Gerald Rwejema and Kiyimba Enock Sempala) and briefly are that;- the land comprised in Block 85 Plot 64 measuring 9.9 acres is registered in the names of Bashir Ssemogerere with an encumbrance of a caveat lodged by all the three Applicants; the 1st and 2nd Applicants bought 5 acres out of the suit land from the registered proprietor on 23/11/2011\$; and the 3rd Applicant bought 4.9 acres from the same person on 12/02/2013\$, and full consideration was paid by the applicants in both transactions respectively.

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- 3. That the vendor (Ssemwogerere Bashir) signed transfer forms in favor of the Applicants and promised to handover the certificate of title within one week after the sale; and the Applicants took possession, started utilizing the land accordingly. That the Applicants have taken all necessary steps to look for the vendor to hand them the duplicate certificate of title but their efforts have proven futile; that the Applicants made advertisements in different newspapers of wide circulation so as to trace for the vendor but in vain; and they all prayed that the application is granted in the interest of justice.
- 4. The Application is further supported by the following evidence: copies of land sale agreements dated 23/11/2011 and 12/02/2013 respectively; copies of Transfer forms, Luvumbula Village LC introduction Letters, copies of photographs showing land and burial grounds, statement of Search from Ministry of Lands, Housing and Urban Development dated 31/05/2022, Letter Applying for a Vesting Order dated 22/08/2023\$ and a copy of a notice in the Daily Monitor Newspaper dated Friday, September 1st, 2023.
- 5. The Application was opposed by the Respondent through Mr. Kankaka Robert Kizza (Registrar of Titles) who filed an Affidavit in reply in which he deponed that; the Respondent is an official of Government charged with the statutory duty of Registration of land and keeping the sanctity of the Land register; that the suit land (Block 85 Plot 64) measures approximately 4.0063 Hectares, registered in the names of Bashir Ssemogerere and is subject of a caveat lodged by all the Applicants in this matter; that the Applicants should

avail original copies of the Sale agreement and transfer forms for court's inspection; that in the event the court is inclined to grant the application, the Applicants should pay stamp duty as assessed by the Chief Government Valuer. That the Respondent has no personal interest in the land save for being custodian of the Register and has been sued to effect orders of court; that the Respondent undertakes to comply with such orders when issued and shouldn't be condemned to pay costs of the Application. The respondent attached a recent search letter dated 19th October 2023 and a certified copy of the land title of the land in issue.

- 6. Representation; the Applicants were represented by Counsel Nalunkuma Esther of M/s Xander Advocates while the Respondent was represented by Counsel Atusaasire Godwin.

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- 7. The parties filed written submissions and court visited locus on \$25/01/2024\$.
- 8. Issues for determination;
 - a. Whether this application has been properly made before this court. If so;
 - b. Whether the land comprised in Mawokota Block 85 Plot 64 Land at Mpigi can be vested into the Applicants.
 - c. Whether the Applicants can be registered on the land title as tenants in common.
 - d. What are the remedies available?
- 9. Brief summary of the case; The Applicants through two different sale agreements purchased 5 acres and 4.9 acres of Land Comprised in Mawokota Block 85 Plot 64 Land at Mpigi from a one Ssemogerere Bashiri on 23/11/2011 at 9,700,000/- (for the 1st and 2nd Applicants) and \$12/02/2013\$ (for the 3rd Applicant) at 14,900,000/- respectively; the purchase price was paid in full, the Applicants took immediate possession of their land after purchase. The vendor(Ssemogerere Bashir) signed transfer forms in favor of the Applicants and promised to hand over duplicate certificates of title for purpose of transferring the suit land into their names; however, the vendor cannot be found even after filing a notice in a newspaper advert; the Applicants lodged a caveat on the suit land to protect their interest from 3rd parties, and applied for a vesting order to the Respondent but it declined and advised them to apply to court hence the instant Application.
- 10. Resolution of issue no 1. Whether this application has been properly made *before this court.*
- Section 167 of the Registration of Titles Act Cap 230 provides that;

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

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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 the by same results as declared by section 166 in respect of the vesting orders *mentioned there.*

Therefore, applications of this nature must be made to the Registrar of Titles as an office of first instance and all evidence to warrant a grant of a vesting order must be proved before a registrar. Where a registrar fails/refuses for some reason to grant the same, then an Application for a vesting Order can be made to the High Court.

In the instant application, it is the Applicants' evidence that they applied to the Respondent by their letter dated 22/08/2023 through Xander Advocates to the Registrar of Titles Mpigi to have the land in issue vested in them but the Respondent declined and advised them to apply to this court. This fact was not disputed by the Respondent in its affidavit in reply. The Respondent attached a Search letter as noted above and undertook to comply with any court orders when issued and prayed not to be condemned in costs.

11. In Misc. Application No. 40 of 2018, Mutyaba Tom Vs James Kayimbye Sebinene M and Anor; Justice Henry I Kawesa had pointed out that, "By suggesting that the Respondent obtains a vesting order from court, it is in my view; meant that the Commissioner was disinterested in granting the vesting order under Section 167 of the Registration of Titles Act cap 230, in any case such Application was made to him, which rendered court's intervention necessary".

From the above, I find that this application has been properly brought before this court.

12. Issue no.2, Whether the land comprised in Mawokota Block 85 Plot 64 Land at Mpigi can be vested into the Applicants.

Counsel Nalunkuuma Esther for the applicants relied on the authority of Aida Najjembe v Ester Mpigi [Court of Appeal 2009] in which the Court of Appeal

laid down the conditions to be considered when handling applications of this nature. These include; -

- i. 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.
- ii. The purchaser or those claiming under him or her have taken possession of the purchased land.
- That the entry into possession by the purchaser has been acquiesced by the iii. 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 he/she cannot be found.
- 13. Counsel Nalunkuuma further added that a search report attached to their pleadings shows that the land is still registered in the names of the vendor (Ssemwogerere Bashir) and the only encumbrances that exists is the caveat lodged by the Applicants to protect their interests. All the applicants paid the purchase price of their respective plots in full and a letter from the Local Council Chairperson of Luvumbula Village specifies that the Applicants have been in possession for 12 and 10 years respectively. Counsel prayed that the Application is granted.
- 14. As far as the first condition is concerned, the suit land is registered in the names of Bashir Ssemwogerere (the vendor) Vide Instrument No. KLA 190305 since 17th September 2001 at 11.15am. Therefore, the suit land is registered under the provisions of the Registration of Titles Act.
- 15. The Applicants' two Sale Agreements were presented to court. The 1st and 2nd Applicant's agreement dated 23/11/2011 between Ssemwogerere Bashir on one part and Mr. Ssekanabo Gerald Rwejema and Lwanyaga Lawrence on the other part; and the second agreement dated 12/02/2013 is between Ssemwogerere Bashir and Kiyimba Enock Sempala. From these agreements it is clear that the Applicants paid the full purchase price and Ssemwogerere, the Vendor, was to give each one of them a certificate of title of the sold land after one week.

To prove possession, the Applicants attached letters from the chairperson Mr Sseruwagi Lawrence of Luvumbula Village Kiringente Parish Kiringente Subcounty, Mpigi district in which he confirmed to court that the Applicants

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bought land at Block 85 Plot 64 from Ssemwogerere Bashir and have been in occupation of their land since they purchased it. The 1st and 2nd applicants attached copies of photographs with graveyards and other land use activities.

The Applicants further attached an advert in the Daily Monitor Newspaper in which the Applicants informed the general public about this land sale and the disappearance of the vendor, Mr. Bashir Ssemwogerere, and that his whereabouts are unknown.

- 16. This court also visited locus and actually confirmed that the first two Applicants have some graves and maize plants on the suit land and the 3rd Applicant has been using his portion commercially by selling marram soil which activity is also done by the first two Applicants.
- 17. With the above averments, this court finds that the Applicants bought land that is governed by the Registration of Tittles Act; they paid the full purchase price; they took possession and their occupation has not been challenged by the Vendor Bashir Ssemwogerere whose whereabouts are unknown for the applicants to complete the processes of getting registered on the tittle of the land in question.
- 18. Consequently, I am satisfied that the conditions set out in Section 167 of the Registration of Titles Act and the case of Aida Najjembe v Ester Mpagi (supra) for grant of a Vesting order have been met by the Applicants.

Issue no. 2 is therefore answered in the affirmative.

19. Issue no.3. Whether the Applicants can be registered on the land title as tenants in common.

Section 56 of the Registration of Titles Act provides for Tenants in common. It provides that, "... where two or more persons are entitled as tenants in common to undivided shares of or in any land, those persons shall in the absence of any evidence to the contrary be presumed to hold that land in equal shares."

- 20. Similarly, it was properly observed by Mubiru J., in Auma Lillian Vs David Livingstone Lakony (HC CA No. 12 of 2019) where Mubiru. J that, "every tenant in common owns a distinct share or interest in the land which may be equal or *unequal... and ownership interest do not have to arise at the same time".*

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- 21. It is a fact that the applicants are not tenants in common and therefore the provisions of the above section do not apply to them. However, it is their prayer that this court orders them to be registered as tenants in common so as to bring them under the above mentioned section.
- 22. The applicants bought the whole acreage of land of 4.0063 which translates into 9.9 acres of which the 1st and 2nd Applicants bought 5 acres and 4.9 acres was bought by the 3rd applicant from the vendor, Ssemwogere Bashir. This implies that they acquired distinct interest in this land at different times.

- 23. An Applicant for a vesting order should be given the same interest in land he would have got had the registered owner effected the transfer at the time of sale.
- 24. Under Section 98 of the Civil Procedure Act, this court has inherent powers to make decisions which are pertinent to the ends of justice. Thus, in the absence of any contrary evidence, this court is inclined to exercise its inherent powers by granting their prayer to be registered on the land in issue as tenants in common.
- 25. Finally, the application is granted as prayed with the following Orders;
- 1. The Respondent vests land comprised in Mawokota Block 85 plot 64 land at Luvumbula Mpigi District in the names of Ssekanabo Gerald Rwejemba, Lwanyaga Lawrence and Kiyimba Enock Sempala as tenants in common.
- 2. The Respondent doth issue a special certificate of title in respect of land comprised in Mawokota Block 85 plot 64 to the Applicants.
- 3. The Applicants shall meet all the necessary fees for vesting the Land into their names, and costs of this Application.

Signed, dated and delivered at Mpigi this..... \$...2024\$

Nabakooza Flavia-k. Judge

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