

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
LAND DIVISION

MISCELLANEOUS CAUSE NO 062 OF 2019

MARIA GORRETTI MUSIMENTA:.....APPLICANT

VERSUS

COMMISSIONER FOR LAND REGISTRATION:.....RESPONDENT

BEFORE: HON. MR. JUSTICE HENRY I. KAWESA

RULING

This application was brought by notice of motion under Section 167 of the Registration of Titles Act Cap 230, Section 98 of the Civil Procedure Act Cap 71 and O.52 rr1 &3 of the Civil Procedure Rules S1 71-1 seeking for orders that;

1. A vesting order be issued directing the Commissioner Land Registration to vest land comprised in Private Mailo Kyadondo Block 94 Plot 195 and 58 at Kata into the Applicant.
2. Costs for the application be met by the Applicant.

The grounds of this application, which I shall not reproduce, are supported by the affidavit deponed by the Applicant and a supplementary affidavit of a one Kamenge Dieudonne. It is averred by the Applicant that on the 4th day of January, 2012, she purchased both leasehold and mailo interest of the suit land from Kamenge

Dieudonne who was by then the equitable owner and; that she paid the full purchase price for the suit land. *(A copy of the sale agreement, receipts of payment, and a memorandum of understanding was attached as "A" and "B")*.

That after purchase, Kamenge Dieudonne handed over to her a duplicate certificate of title, transfer forms which were signed in his favour by Settenda Ahmed and a leasehold certificate of title to the suit land. *A copy of the duplicate certificate of title and leasehold title was attached as "C1" and "C2"*. That she immediately took possession of the suit land upon payment and she is still in possession of it unchallenged by the registered proprietor. That Kamenge Dieudonne the former owner being a Burundian national at the time of the sale could not transfer the mailo interest in the suit land in her favour. That she agreed with Kamenge Dieudonne that upon acquiring his Uganda citizenship, he would have the suit land transferred into his names as per the transfer forms which had been executed by the registered proprietor, Settenda Ahmed, and subsequently into her names.

Further that in the meantime, she executed a lease agreement with Kamenge Dieudonne who transferred that interest in her favour. *A copy of the leasehold title was attached as "D"*. That subsequently, Kamenge Dieudonne acquired the Ugandan citizenship on the 6th day of July, 2018, but she could at the time not trace the transfer forms executed in his favour by the registered proprietor.

Further, that she was then informed by Kamenge Dieudonne that Settenda Ahmed was dead and therefore the execution of fresh transfer forms was impossible. It was also her evidence that she tried applying to the Respondent to have the suit land vested in her but in vain.

Her story was properly corroborated by the averments in the affidavit of Kamenge Dieudonne which I shall also not reproduce. What is crucial to mention is that Kamenge Dieudonne attached a copy of his dual citizenship certificate as “F” to confirm his Ugandan citizenship.

The Respondent entered appearance in the matter by filing an affidavit in reply. In its affidavit, the Respondent did not oppose the application but only gave clarity on the status of the suit land. It was confirmed by the Respondent that the suit land is indeed registered in the names of Settenda Ahmed.

Counsel for the Applicant filed written submissions which I shall take into account in determining this application.

Counsel properly directed me to Section 167 of the Registration of Titles Act Cap 230 as the applicable law in applications of this nature. According to the Section;

“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.”

Counsel for the Applicant also cited the case of **Aida Najjemba versus Ester Mpaqi, Court of Appeal Civil Appeal No. 74 of 2005** wherein the gave some guidance as to the conditions which ought to be satisfied under the above Section before the Registrar can exercise his or her powers. These are;

1. That the land must be registered under the Registration of Titles Act and the purchaser must have paid the whole of the purchase price to the vendor.
2. That the purchaser or those claiming under him or her have taken possession of the purchased land.

3. That the purchaser has entered the land and the entry has been acquiesced in by the vendor or his or her representative.
4. That the transfer of the property has not been executed because the vendor is dead or is residing out of jurisdiction or cannot be found.

It is trite law that before an Applicant invokes the inherent jurisdiction of Court under Section 98 Civil Procedure Act, Cap 71 in applications of this nature; he/she must have applied first for a vesting order to the Commissioner for Land Registration/Registrar, who for some reason must have declined to exercise his or her powers under Section 167 Registration of Titles Act Cap 230. See *Aida Najjemba versus Ester Mpagi* (Supra).

It was not disputed that the Respondent declined to vest the suit land in the names of the Applicant, upon application. I am, therefore, satisfied that the condition precedent for invocation of this Court's inherent jurisdiction has been satisfied by this application.

Turning now to the conditions above; having carefully looked at the whole application, I am of no doubt it satisfies all the above conditions. In the circumstances entirely agree with the Applicant's Counsel that this application ought to be granted as prayed. I, therefore, I order as follows;

1. That the Respondent vests land comprised in Private Mailo Kyadondo Block 94 Plot 195 and 58 at Kata into the Applicant.

2. That the Applicant meets all the fees necessary for vesting the suit land into her names.

3. The Applicant meets costs of this application.

I so order

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Henry I. Kawesa

JUDGE

26/08/2019

26/08/2019:

Kiconco Charity for the Applicant.

Applicant present.

Respondent absent.

Court:

Ruling communicated to the parties above.

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Henry I. Kawesa

JUDGE

26/08/2019