

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

MISCELLANEOUS CAUSE NO 008 OF 2018

BHIMJI KALABHAI PATEL:::APPLICANT

VERSUS

- 1. THE COMMISSIONER FOR LAND REGISTRATION**
- 2. BHUPENDRA AMBAIDAS PATEL**
- 3. DINKER CHIMANBHAI PATEL**
- 4. HARIHAR RAMBHAI PATEL**
- 5. KANUBHAI CHANDULAL DESAI:::RESPONDENTS**

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 33 of the Judicature Act Cap 13; Section 98 of the Civil Procedure Act Cap 71; and O. 52 rr.1 & 3 Civil Procedure Rules SI 71-1 seeking for orders that;

- 1. A vesting order be issued directing the Commissioner for Land Registration to transfer property/land comprised in freehold Register Vol. 60, Folio 25 25; Plot 26 Block 204 Kyadondo, Mengo District at Kawempe from the registered proprietor to the Applicant’s name.
- 2. Costs of the application be provided for.

The ground upon which the application is premised are that;

- 1. The Applicant is a Ugandan citizen and Managing Director of M/S Hi-Tech Metal Industries Ltd.

2. That on the 17th of April 1996, Hi-Tech Metal Industries Ltd purchased land comprised in FRV 60, Folio 25 25; Plot 26 Block 204 Kyadondo Mengo District at Kawempe from the 2nd to the 5th Respondents.
3. That the said company paid full consideration of U\$ 120,000 (*One hundred and twenty thousand United States Dollars*) to the vendors, the 2nd to 5th Respondents herein who did acknowledge receipt thereof.
4. That the said company, Hi-Tech Metal Industries Ltd took vacant possession of the land immediately and have since developed the same.
5. That the said 2nd to 5th Respondents/ Vendors handed over to the purchaser company the duplicate certificate of title thereof, signed transfer forms and consent form to enable the latter transfer the same in its name.
6. That the purchaser company lost the duplicate certificate of title, transfer forms and all the accompanying documents before effecting the said transfer.
7. That since then, the purchaser company has with all due diligence and dedication for over a period of 20 years plus tried to trace and find the 2nd to 5th Respondents/Vendors and/ or their representative but in vain.
8. That the purchaser company has since assigned its rights in the property to the Applicant herein its Managing Director.
9. That the purchaser company has remained in possession and occupation for over a period of 22 years unchallenged by anyone including the 2nd to 5th Respondents.
10. That it is in the interest of justice and fairness that this application be granted.

The application is supported by an affidavit sworn by the Applicant wherein he reiterates most of the above grounds. I shall therefore not belabor to reproduce them save that he attached the following documents thereto in proof of his case;

1. A copy of a citizenship certificate as annexure "A".

2. A copy of a sale agreement attached as annexure “B”.
3. A copy of architectural drawings and structural plans attached as annexure “C”.
4. A copy of a board resolution assigning the suit land to him as annexure “D”.
5. A copy of the duplicate certificate of title as annexure “E1”.
6. A copy of a search statement as annexure “E1”.

All the Respondents were served with this application although the 2nd to 5th Respondents were served by substituted service. Despite this, none of them labored to oppose the application. Counsel for the Applicant filed written submissions which I shall consider in the determination of the matter.

Resolution

Section 167 of the Registration of Titles Act Cap 230 under which this application was brought 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 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.

According to the case of *Aida Najjemba v. Ester Mpagi Civil Appeal No. 74 of 2005*, the 4 conditions which must be demonstrated in order for the registrar to exercise his powers under the above section are;

1. 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,
2. The purchaser or those claiming under him or her have taken possession of the purchased land,
3. That the entry into possession by the purchaser has been acquiesced 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 he/she cannot be found.

The above elements were also reiterated in the case of *Robert Mukanza & Petra Mukanza versus Commissioner for Land Registration Misc. Cause No.75/2015* as was cited by Counsel for the Applicant. Counsel for the Applicant properly related the evidence in the affidavit to the above elements. He thereafter urged Court to grant the application on ground that the Applicant had demonstrated all the conditions for the grant of a vesting order. He further buttressed his submission with the case *Harriet Kisule versus Commissioner for Land Registration Misc. Cause No.119 of 2016* wherein a *vesting order was granted upon proof of the above grounds*. Additionally, he cited Section 40(4) of the Land Act Cap 227 to submit that the Applicant had also demonstrated that he is a Ugandan citizen such that there was no bar for vesting the freehold interest in him.

Having carefully looked at the evidence on record; I am also convinced, like Counsel that the Applicant has demonstrated all the grounds for the grant of his application. One concern would be that he is not the purchaser but, this is addressed by the fact that he has showed that the purchaser company assigned its interest in the suit land to him. The scenario then falls all fours with Section 167 of the Registration of Titles Act which envisages that even those claiming under the purchaser may claim a vesting order on the basis of the Section.

Logically, it means that the Applicant has constructive possession by virtue of the fact that the purchaser company is now in actual possession of the suit land on his behalf.

There last concern relates to procedure by which this application was brought to this Court. It is clear that Section 167, as above, envisages the 1st Respondent as the office clothed with statutory power to vest land in persons who demonstrate the above conditions. Several cases have reiterated this by stating; that before an Applicant invokes the inherent jurisdiction of Court under Section 98 Civil Procedure Act or Section 33 Judicature Act in applications of this nature; he or she must have applied first for a vesting order to the 1st Respondent, who for some reason must have declined to exercise his or her powers under Section 167 Registration of Titles Act. See *Aida Najjemba versus Ester Mpagi (Supra); Ronald Oine versus Commissioner Land Registration Misc. Cause No. 90 of 2013; Robert Mukanza & Petra Mukanza vs. Commissioner for Land Registration Misc. Cause No.75/2015.*

The Applicant did not prove compliance with the above procedure before bringing this application to Court. His Counsel nevertheless urged Court to grant the application on the basis Court's inherent jurisdiction under Article 139(1) of Constitution of the Republic of Uganda, 1995.

I know of certain cases where applications of this nature have been granted on the basis of inherent jurisdiction notwithstanding the noncompliance with the said procedure although; I am certain that such jurisdiction has been exercised on the basis of peculiar facts. See *Aida Najjemba versus Ester Mpagi (Supra).*

Having said that, I note that the 1st Respondent opted not to oppose this application. Considering this, I shall exercise the Court's jurisdiction on the basis of this fact to grant this application otherwise; I would have ordered the Applicant to first comply with the above procedure before seeking to invoke this Court's jurisdiction.

The application therefore succeeds but without costs.

I so order.

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Henry I. Kawesa

JUDGE

15/3/2019

15/3/2019:

Mwigo Allan and Marvin Atukunda on brief for Wagabaza for Applicant.

Sekitto for 1st Respondent.

No Counsel for 2 & 5 Respondents.

No parties in Court.

Mwigo:

Court directed that written submissions be filed, the 2nd Respondent did not file the reply or written submissions. We pray that Court determines the matter.

Sekitto:

After perusal and discussion with the Commissioner, we undertake to comply with the Court's decision.

Court:

Having looked at the pleadings and the submissions, Court has to make a Ruling.

Ruling accordingly communicated to the parties as above.

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Henry I. Kawesa

JUDGE

15/3/2019