

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**CIVIL DIVISION**

**MISCELLANEOUS CAUSE NO.333 OF 2020**

**SHEIK KIBUNGO UMAR BAKASAMBE ----- APPLICANT**  
**ALIAS SHEIK UMAR KIBUNGO**

**VERSUS**

**THE COMMISSIONER LAND REGISTRATION----- RESPONDENT**

**BEFORE HON. JUSTICE SSEKAANA MUSA**

**RULING**

The Applicant filed an application for Judicial Review under Section 36(1)(a), 37 of the Judicature Act Section 98 of the Civil Procedure Act and Section 182 of the Registration of Titles Act and Rules 3,5,6,7 and 10 of the Judicature (Judicial Review) Rules, 2009 and Order 52 r 1,2 and 3 of Civil Procedure Rules seeking orders that;

- a) A Mandamus Order directing the Respondent and any other person acting on authority therefrom to issue certificates of land title for land comprised in Kyadondo Block 82 Plots 685 & 686 and 662 Land at Kungu and register the applicant therein as the registered proprietor.
  
- b) Costs of the application be provided for.

The grounds in support of this application were stated in the supporting affidavit of the applicant but generally and briefly state that;

- I) The applicant bought land comprised in Kyadondo Block 82 Plot 685 and 686 Land at Kungu from Hamisi Mukasa and Brothers of Kilokole, Kawempe in 1989.

- II) That the applicant further bought the interest (Land) of Mary Nakyagaba also known as Mariam Nakyagaba who was a beneficial owner of land comprised in Kyadondo Block 82 Plot 662 measuring 3.06 Hectares and the registered proprietor (Hamisi Mukasa and Brothers signed transfer forms in my favour in 1989.
- III) That the said Hamisi Mukasa and Brothers duly signed transfer forms of the said land in the applicant's favour and he made the requisite payments for stamp duty, sub-division and registration fees.
- IV) That after paying stamp duty and registration fees, the applicant got a clearance in 1994 to enable the issuance of certificates of title in his names and he has tried to follow up on the titles from the land office but all the documents were misplaced in the land office.
- V) That the applicant has tried to trace the lost or misplaced documents from both Mpigi and Wakiso Land offices but has not been successful for the last 10 years.
- VI) That the applicant has been in possession (physical and actual) of the said land up to date for over 30 years with a family house thereon, a Mosque, burial grounds and carrying on subsistence farming as a source of his livelihood without any interference.
- VII) That the applicant confirms that the land has no encumbrances (caveats), neither has it been mortgaged or pledged as security to any person or financial institution and none of the former owners has ever lodged any claims over the same piece of land.
- VIII) That the Administrators of the Estate of the late Zakaria Musitwa confirmed the sale of the subject land to the applicant and tried to complete the transaction in 2015 by providing fresh approvals for the transfer.

IX) That the applicant has made two applications for vesting order dated February, 2020 and 29<sup>th</sup> September, 2020 to have the land registered in the applicant but the respondent has not made any response or decision to the said application.

The respondent never opposed this application and he did not file any affidavit in reply.

At the hearing of this application the court ordered the application to proceed ex parte since the respondent did not appear in court and had not filed any affidavit in reply. Three issues were proposed for court's resolution;

**1. Whether the applicant is entitled to have the land comprised in Kyadondo Block 82 Plots 685, 686 and 662 Land at Kungu be registered in his name?**

**2. Whether the applicant is entitled to the remedies sought?**

The applicants were represented by *Mr. Kajubi Ali Muhammed* whereas the respondent was not represented and never appeared in court.

### **ISSUE ONE**

***Whether the applicant is entitled to have the land comprised in Kyadondo Block 82 Plots 685, 686 and 662 Land at Kungu be registered in his name?***

The respondent never filed any affidavit in reply to contradict or rebut the evidence adduced by the applicant, therefore an inference may be made that they did not have anything in answer. Lack of such evidence from the Respondent condemns it to adverse inference. This principle was reaffirmed by the England and Wales Court of Appeal in **Wisniewski (A Minor) v Central Manchester Health Authority [1998] EWCA Civ 596** where it held that;

*"In our legal system generally, the silence of one party in face of the other party's evidence may convert that evidence into proof in relation to matters which are, or are likely to be, within the knowledge of the silent party and about which that party could be expected to give evidence. Thus, depending on the circumstances, a prima facie case may become a strong or even an overwhelming case."*

The applicant has adduced evidence of purchase and intended transfer of land comprised in Block 82 Plot 685 & 686 and 662 that originally was registered in the names of the Hamisi Mukasa Brothers. The documents to facilitate the transfer were all lodged with the officials of the respondent and they went missing.

The applicant is in unchallenged possession since 1990 for the last 30 years and is staying on this land with his home and Mosque and burial grounds and some carrying on subsistence farming for his livelihood and the family.

The applicant paid the relevant stamp duty and fees and duly obtained a tax clearance in 1994 to enable him have his land transferred in his names and the same were presented to the land office and all got misplaced and lost in their custody.

That the applicant's assertions are confirmed by Hon. Syda N.M Bbumba who was is a member of the family of the Late Hajj Zakaria Mubi Musitwa who was a substantial shareholder in the company of H.Mukasa & Bros.

Hon. Syda. N.M Bbumba as one of the administrators of the Estate of the Late Zakaria Mubi Musitwa (then) tried to assist in completing the transaction and the family which was the majority beneficiary of the company indeed have no claims.

The applicant through his lawyers has attempted to have the certificates of title issued in his names and by way of asking for vesting orders but the respondent has declined or refused to process the certificates of title and to have them registered in his names.

This court is satisfied that the applicant is a legal owner who acquired the said land in 1989 and the same should be transferred into his names necessary stamp duty was properly paid. The respondent ought to take responsibility for the missing documents and exercise its powers and mandate to have the applicants land transferred into his names.

Therefore issue number one is accordingly answered in the affirmative.

***Whether the applicant is entitled to the remedies sought?***

The applicants are before court seeking an order of Mandamus. Under Rule 3(1)(a) and 6(1) of the Judicature (Judicial Review) Rules 2009 this court is mandated to issue an order of Mandamus.

An applicant for an Order of Mandamus is required to establish the following:

- a) A clear legal right and corresponding duty on the Respondent
- b) That some specific act or thing, which the law requires that particular officer to do, has been omitted to be done by him;
- c) Lack of an alternative, or
- d) Whether an alternative exists but is inconvenient, less beneficial or totally ineffective.

See ***Hon Justice Geoffrey Kiryabwire & Others vs Attorney General High Court Miscellaneous Application No. 783 of 2016***

The applicant has satisfied the above requirements and the respondent has not defended this application which is an indication that she admitted the truthfulness of the averments in the affidavit in support. See ***David Kato Luguza & Another vs Evelyn Nakafeero & Another HCCA No. 37 of 2011***

An Order of Mandamus issues directing the Respondent and any other person acting on authority therefrom to issue certificates of land title for land comprised in Kyadondo Block 82 Plots 685 & 686 and 662 Land at Kungu and register the applicant therein as the registered proprietor.

The respondent is directed to issue the certificates of title within 60 days from the date of delivery of this ruling.

The applicants should meet their own costs.

I so order

**SSEKAANA MUSA**

**JUDGE**

**21<sup>st</sup> /01/2021**