



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**

**Civil Case 750 of 2006**

1. Land and Environmental Law Division
2. Subject – Miscellaneous application vesting orders
3. Ex parte application – dated 20 September 2006

Law: section 3A

Order L r 1 Civil Procedure Rules

Cap 21 Laws of Kenya

4. Reasons

LR/Nbi/Block 74/144 – house bought in 1975 by a Parish priest of the Catholic Church

Original documents misplaced. No title deed obtained

Prayers of orders of court vesting property to the archdiocese of Nairobi- registered Trustees (Holy Trinity Buruburu/Parish)

5. Held:
  - 5.1. Authority from Trustee to advocate lacking
  - 5.2. Law not disclosed in which prayer is sought. – only procedural law given
  - 5.3. Vesting is given where there is title and or ownership
- i) The Civil Procedure Act

Execution of decrees and orders

- ii) Trustees Act.167

Vesting upon any trustee property, land security

iii) Companies Act Cap 486 winding up rules

Vesting of disclaimed property

iv) Insurance Act Cap. 487 Child and vesting age.

6. Held: That the vesting prayer herein are vague, unclear under what law is required to be used. Application struck out.

No orders as to costs, ex parte application.

6. Case law – Nil

7. Advocate

J. Mukuru for Wanjiku Mukuru & Co. Advocates for the plaintiff

**HOLY TRINITY CATHOLIC CHURCH BURUBURU.....APPLICANT**

**VERSUS**

**IN THE MATTER OF LR NO.NBI BLOCK 74/44.....RESPONDENT**

**RULING**

1: APPLICATION 20.9.06

1. The application of 20.9.06 brought under a miscellaneous application under section 3A of the Civil Procedure Act Order Lr1 of the Civil Procedure Rules and Chapter 21 Laws of Kenya seek orders of this court:-

“1. That this honourable court be pleased to

make and do hereby make an order restraining land parcel number LR.Nrb/Block74/144 to the Archdiocese of Nairobi Kenya registered Trustees (Holy Trinity Buru Buru/ Parish).”

2. That costs of this application be in the cause

2. In brief, the applicant ex parte applicant – not disclosed but whom I presume is the Catholic Church “the Archdiocese of Nairobi of Kenya registered Trustee/Holy Trinity (Buru Buru 1 Parish) “Prays that the property in question be vested in them so that they may be issued with a title deed from the lands office”.

II Background of application

3. The Commonwealth Development Corporation was in charge and did construct houses in Nairobi known as the Buru Buru estate. There was a piece of open space that was not meant to be constructed on. It appears that the Catholic Parish present, one father Robert Ujjs went on behalf of the Archdiocese of Nairobi and persuaded the person in charge of the property one Ian Lane to construct a house on the open space. This person did construct the house and others the house now known as 144 Buru Buru Phase I. The year was 1975. The said Parish priest bought the house cash for Ksh.55,000/- and paid into the Kenya Commercial bank account along Moi Avenue.

4. The interest in purchasing the particular house “144 small letters” is that the house was next to the Catholic Church. What was surprising is that no title deed was obtained.
5. The purchase papers and receipts were misplaced and after 32 years the church was unable to obtain the said misplaced documents and papers.
6. The applicant proceeded to the lands office at the Ministry to see if they could obtain title. They had nothing to show. As the developer of the property were handled through Housing Finance Company of Kenya, they were referred there. The Housing Finance Company of Kenya informed them that they were merely the end financier of the project. They kept records only of persons who took out a mortgage with them. Those who paid cash as was in the cases of the applicant were never on their records. They recommended that the applicant return to the Land Office and obtain a search on the land. The land department declined to give a search certificate on grounds that a title be accordingly produced.
7. The applicants came to court seeking vesting orders.

## II: Facts

8. From the file, the above facts had not been deponed to by either the Ministry of Lands and or the Housing Finance company of Kenya. The facts were obtained from correspondence held by the applicant and annexed to the affidavit.

9. The house property was allegedly brought by Father Robert UuJ’s. it was thereafter registered at the City Council of Nairobi rates Department in the name of Jericho Catholic Church P.O. Box 75524 Nairobi. They, the City Council of Nairobi, through the Deputy Chief Valuer of the Town Clerk confirmed payment of rates since 1975.

9. There was therefore no transfer documents between the commonwealth Development corporation and the said applicants, father Robert Uuj’s did on the Jericho Catholic Church.

## III Should a resting order issue?

10. A resting order has been defined as:-

“An order which may be granted by the Chancery Division of the High Court of justice ( formerly by chancery), passing the legal estate in lieu of a conveyance.”

Blacks law Dictionary sixth edition.

11. In Kenya the High Courts of Kenya have powers to issue vesting orders. These are orders given by the High Court to a person entitling him/her of possession control or title of certain properties.

12. In this application the applicants have not shown under which law they have come to court. Section 3A Civil Procedure Act the inherent powers of the court, Order Lr1 Civil Procedure Rules the procedural laws under Cap.21 of the Laws of Kenya does not assist. The court may issue orders under

12.1. The Civil Procedure Act (Cap 21) Laws of Kenya for execution of decrees and orders on movable property nor provided for vesting such property to the purchaser.

Order XX1 Civil Procedure Rules

12.2. Trustee Act (Cap 167) Laws of Kenya

Powers confirmed

Section 53,47,42,45 vesting land shall or thing in action in any trustee of a charity or society.

### 12.3 Companies Act (Cap 486) Laws of Kenya

Section 66 (1) (2) under the company (winding up rules)

The court may vest of disclaimed property. Leave is required by affidavit to do so.

### 12.4. Insurance Act (Cap.487) Laws of Kenya

Dealing with section 95 the vesting age of a minor to a policy.

13. There is nothing under any of these rules that permits this court to proceed by way of a vesting order in this case

#### IV: What course should a party take?

14. I do not know the exact position of this matter as the affidavit is of only one person who infact was never the actual person who paid the purchase price the court would have expected a report by the original purchaser be made to the police of such loss. That a police abstract of loss of such items be obtained.

15. An affidavit deponed to by the purchaser be made that they infact lost the original documents and no copy is available even from the developer who in effect destroyed their documents within the period of 10 years there after.

15. That an affidavit from the developer of these facts be obtained.

16 The investigations of the actual owner be made .

17. As it stands the information availed to this court is very scanty and little. I further would find that it is difficult to establish ownership on the brief information given.

18. As for the vesting orders it appears that all orders made by the courts the owner is known and the recipient is identified who is to receive the same.

#### V) Finding

17. I decline to make any orders herein on information not fully disclosed nor on orders/laws not known.

#### VI Conclusion

I hereby struck out this application with no orders as to costs the application being exparte.

Dated his 14<sup>th</sup> day of June 2007 at Nairobi.

**M.A. ANG'AWA**

#### **JUDGE**

Mukuru from Wanjiku Mukuru & Co. Advocates for the applicant.