

UGANDA / JUDGMENT

Obuku v Obitre (Miscellaneous Application 1070 of 2024) [2024] UGHCFD 62 (11 October 2024)

[2024] UGHCFD 62

COURT

HC: Family Division (Uganda)

BEFORE

Komuhangi, J

CASE / FILE NUMBER

Miscellaneous Application 1070 of 2024

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA
(FAMILY DIVISION) MISCELLANEOUS APPLICATION NO. 1070 OF 2024 5 (ARISING
FROM HIGH COURT DIVORCE CAUSE NO. 169 OF 2021)

LAETITIA AKUNY OBUKU ===== APPLICANT

VERSUS

GEOFFREY JUDE OBITRE ===== RESPONDENT

BEFORE: HON. LADY JUSTICE ALICE KOMUHANGI KHAUKHA RULING

Introduction

- 15 This Ruling is in respect of an Application brought under Section 34 (1) of the Civil Procedure Act; Section 33 of the Judicature Act; Section 98 of the Civil Procedure Act; Articles 31 (4) and 34 of the Constitution of the Republic of Uganda, 1995; Sections 3, 4, 5 and 6 of the Children Act; and Order 52 Rules 1 and 3 of the Civil Procedure Rules for Orders and declarations that:
 - (a) A declaration that pursuant to this Honourable Court's Judgment dated 30th 20 November 2023 in Divorce Cause No. 0169 of 2021, *Laetitia Akuny Obuku versus Geoffrey Jude Obitre* and the Decree extracted thereunder, there is no fixed time limit within which the Petitioner must pay over to the Respondent the ascertained value of his 50% share of the matrimonial home comprised in

Kyadondo Block 184 plots 1030 and 1031 land at Nsasa ("the matrimonial home");

- (b) A declaration that the Applicant is able, ready and willing to compensate the Respondent for his ascertained 50% share in the matrimonial home albeit by way of four (4) equal instalments of UGX 55m each across a 12-months' period;
- (c) A declaration that it is just, equitable, and in the best interests of the parties as well as their children that the Respondent's ascertained 50% share in the matrimonial home be paid to him by the Applicant by way of four (4) equal 10 installments of UGX 55 Million each across a 12-months' period;
- (d) An Order that the sum of UGX 220 Million being the ascertained value of the Respondent's 50% share in the matrimonial home be paid over to the Respondent by the Applicant in the following manner within a 12 months' period:
 - 15 2.1 UGX 55 Million be deposited with the Respondent immediately; 2.2 UGX 55 Million be paid on or before the 31st of October 2024; 2.3 UGX 55 Million be paid on or before the 28th of February 2025; and 2.4 UGX 55 Million be paid on or before the 30th of June 2025.
- (e) A declaration and order that the Court's Judgment, Orders and Decree dated 30 20 th November 2023 are governed and must be executed through the Court pursuant to the law governing the execution of Court Orders/ Decrees;
- (f) An Order barring the Respondent from purporting to unilaterally sell the matrimonial home without the Applicant's consent and otherwise than through the Court's legally established process of execution of judgements,

25 Decrees and Orders; and

- (g) An Order granting the Applicant the costs of this Application.

Appearance and Representation

When the matter came up for hearing, the Applicant was represented by Mr. Joel 5 Mucunguzi who was holding brief for Mr. Matthias Ssekatawa from MMAKS Advocates while the Respondent was represented by Ms. Idah Namusoke and Mr. Peter Okello both of Okua & Co. Advocates.

The Application

10 The Application is supported by the Affidavits of the Applicant Laetitia Akunyu while the same is opposed by the Affidavit in Reply by Geoffrey Jude Obitre. The summary of the grounds of the Application as contained in the Affidavit are that:

This Court in **Divorce Cause No. 0169 of 2021** ordered the Applicant to maintain 15 the Matrimonial home but compensate the Respondent the equivalent of 50% of its total value after valuation. The Court further ordered that if the Applicant was unable to compensate the Respondent, the property could be sold and the proceeds of the sale shared equally.

20 The Applicant further averred that the Court did not put time limits within which the compensation should be paid to the Respondent and whereas she is willing and able to compensate the Respondent, she can only do that in four equal installments of UGX 55 Million in twelve months totaling to UGX 220 Million the ascertained 50% share of the Respondent.

It was also the averment of the Applicant that after the valuation of the property, the Respondent attempted to unilaterally sell the same and yet the Applicant is able and willing to compensate the Respondent in four equal installments.

5 The Applicant further averred that it is in the best interests of the children of the marriage that the property should not be sold because it is the place they have known as home.

On the contrary, the Respondent averred that the Order of the Court was clear and 10 imposed a duty on the Applicant to compensate the Respondent the equivalent of 50% of the total value of the property after valuation. According to him, this was supposed to be immediate upon valuation.

He further stated that the Applicant is possessed with enough resources to enable her

15 pay the UGX 220 Million that is the 50% of the total value as per the valuation. It was also the averment of the Respondent that the Applicant has been exclusively living on the property thereby enjoying it alone for more than two years while the Respondent is incurring the expense of renting and even taking care of the welfare

of the children.

The Applicant and the Respondent were married but are now divorced under the Judgment of this Court which dissolved their marriage on the 30th day of November 2023. Concerning the matrimonial home, the Court ordered thus:

25 *"... Due to the Petitioner's very high sentiments on the property and considering that she is the one currently in occupation of the home, and the fact that the Respondent is currently constructing another home, the Petitioner shall maintain it but she shall compensate the*
*Respondent the equivalent of 50% of its total value after valuation. IN THE ALTERNATIVE, in the event that the Petitioner is unable to compensate the Respondent, the property shall be sold and

each party shall be entitled to 50% of the total value of the property as determined by the Valuer;
...!"*

The Chief Government Valuer valued the Property at UGX 440 Million. On 14th May 2024, Counsel for the Respondent wrote to Counsel for the Applicant demanding for full payment of the ascertained 50% share of the Respondent within fourteen (14) days. The Applicant insists she is unable to pay the whole sum but she 10 can pay in four equal installments of UGX 55 Million within a period of one year.

The Respondent vehemently opposes this proposal and insists that it is either immediate payment in full or the property is sold and the proceeds shared equally. The Respondent further contends that the Applicant refused to contribute towards 15 the cost of the valuation in defiance of the Order of the Court, which he singly bore and insists that the Applicant reimburse him UGX 2,672,500.

It is against this background that this Application has been brought to the Court.

20 During the submissions, Counsel for the Applicants raised the following issues:

- 1. Whether the Applicant should compensate the Respondent for his 50% share in the matrimonial home through the indicated schedule of four (4) equal installments of UGX 55 Million each or such other schedule as the Court may order;
- 25 2. Whether the execution of the Court's Decree is governed by the law on execution of Decrees;
- 3. What remedies are available to the parties?

Resolution of the Issues

From the Order of the Court under contention, it is true that the Court did not expressly give timelines within which the Applicant should compensate the Respondent to the tune of 50% share. However, by inference, compensation should

5 have been immediately upon valuation. This Court did not make any provisions for payment in installments.

However, in the absence of an express and definite Order as to when the compensation should be made and in light of the fact that the amount payable is quite high and the insistence of the Applicant that she is unable to pay it all at once, it is

10 within the discretion of this Court to specify the period within which to pay the total amount of money bearing in mind the circumstances of this case.

The Applicant proposed the following schedules: UGX 55 Million be deposited with the Respondent immediately;

UGX 55 Million be paid on or before the 31st 15 of October 2024; UGX 55 Million be paid on or before the 28th of February 2025; UGX 55 Million be paid on or before the 30th of June 2025.

From the reading of the above schedules, the time proposed for the first installment 20 has lapsed while the proposed schedule for the second installment falls due in only twenty (20) days from the date of this Ruling. This therefore, means that the Applicant currently is able to pay the money as proposed for the 1st and 2nd installments.

In light of the above, therefore, the Applicant shall compensate the Respondent in two equal installments as follows:

- (a) Uganda Shillings One Hundred and Ten Million (UGX 110,000,000) shall be paid within seven (7) days from the date of this Ruling and in any case not later than 18 5 th October 2024; and
- (b) The second installment of Uganda Shillings One Hundred and Ten Million (UGX 110,000,000) shall be paid on or before the 28th of February 2025.

Consequently, therefore, this Application partly succeeds on the following Orders:

- 10 1. The Applicant should compensate the Respondent in two equal installments;
- 2. The first installment of Uganda Shillings One Hundred Ten Million (UGX 110,000,000) shall be paid within seven (7) days from the date of this Ruling and in any case not later than 18th October 2024;
- 3. The Applicant shall also pay the Respondent Uganda Shillings Two Million
- 15 Six Hundred Seventy Thousand Five Hundred only (UGX 2,672,500) being her unpaid contribution towards the valuation cost of the property;
- 4. The second installment of Uganda Shillings One Hundred Ten Million (UGX 110,000,000) shall be paid on or before the 28th of February 2025; and
- 5. Each party shall bear the costs of this Application.
- 20

Dated at Kampala this 11th day of October 2024.

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Alice Komuhangi Khaukha

25 JUDGE

11/10/2024

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