

UGANDA / JUDGMENT

Tibagwa and 3 Others v Tumusiime (Miscellaneous Application 5 of 2022) [2023] UGHCLD 336 (31 August 2023) [2023] UGHCLD 336

COURT

HC: Land Division (Uganda)

BEFORE

Byaruhanga Rugyema, J

CASE / FILE NUMBER

Miscellaneous Application 5 of 2022

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT HOIMA

MISCELLANEOUS APPLICATION NO. 05 OF 2022 (Formerly of Masindi 020 of 2022)

VERSUS

DOREEN TUMUSIIME ::::::::::::::::::::::::::::::::::

Before: Hon. Justice Byaruhanga Jesse Rugyema

RULING

- This Application is brought by Notice of Motion under Ss 140, \$[1]\$ 142, 145, 168 and 188 RTA seeking the following orders:
- The caveat lodged by the Respondents on the suit land \$1.\$ comprised in FRV 1228, Folio 18, Block 5, Plot 34 land at Kakoora, Rwamutonga, Katanga, Bugambe, Hoima District be removed.
- The certificate of title for the suit land described above 2. be amended to reflect only the Applicants as joint tenants and the late Tibagwa Joshua's name be cancelled from the list of joint tenants.
- The Respondent pays compensation in the sum deemed \$3.\$ appropriate by the Court and costs of this Application for unreasonable lodging of the caveat challenged herein.

- The grounds in support of the Application are set out in the §2§ Affidavit of **Kusiima Robinah**, the 2nd Applicant and in opposition, the Affidavit in reply deposed by **Doreen Tumusiime, the Respondent and 3 supplementary Affidavits** deposed by one John Bosco Barongo, Kugumisiriza Patrick and Tindyebwa Kusemererwa Monica, sons and daughters respectively to the late Tibagwa Joshua Mijumbi.

Background

- The parties and deponents to this Application are sons and §3§ daughters of the late Tibagwa Joshua Mijumbi and therefore beneficiaries of the Estate of the deceased who died intestate on the 2nd November, 2021.
- In his life time, on 12th July, 2012, the deceased Tibagwa §4§ Joshua acquired and got registered as proprietor on land comprised in FRV 1228, Folio 18, Block 5, Plot 34 situate at Kakoora, Rwamutonga, Katanga, Bugambe, Hoima District together with the 4 Applicants as joint tenants.
- Upon the demise of the deceased **Tibagwa Joshua** on 24th May, §5§ 2022, the Applicants who are joint tenants with the deceased on the above property, applied to the Registrar of Titles to have the property duly vested in their names as the surviving joint tenants by having the names of the late Tibagwa Joshua canceled from the said title so that the Applicants' names remain as the only tenants of the property.

§6§ It is upon the Applicants' Application to the Registrar of Titles to have the properties duly vested in their names that they were confronted with a caveat lodged on the above property by the Respondent on the grounds that she is a beneficiary of the Estate of the late Tibagwa Joshua and was forbidding any dealings with the land hence the present Application.

Preliminary Objection

- Relying on the authority of *Stop and See (U) Lt Vs. Tropical §7§ Africa Bank Ltd H. C. M. A. No. 333 of 2010*, Counsel for the Respondent raised a Preliminary Objection to the effect that the Notice of Motion was served unto the Respondent on 2nd December, 2022 i.e. 4 months and 7 days (around 129, days) out of the time reckoned by O.12 r. 3 CPR which require service within 15 days i.e. not later than the 26th March, 2022 in this case, thus they served out of time without any prior leave of Court. It is his contention that the pleadings ought to be struck out accordingly.
- The Applicants' Counsel did not respond to this preliminary §8§ objection.
- I have carefully perused the Application. It was filed on 5th July, §9§ 2022 and was endorsed by the Deputy Registrar of this Court on the same date of filing. As per the Affidavit of service of a one Kambamu Ben of C/o Ms. Premier Advocates, Counsel for the Applicants, service of the Application was effected upon the then Respondent's Counsel Ms. Isabirye & Co. Advocates on 2nd December, 2022 thus contrary to **O.5 r.2 CPR**, which

require service of summons within 21 days (not O.12 r 3 CPR as Counsel for the Respondent submitted since this is not an interlocutory application). Under O.49 r.2 CPR, Notices of

Motion as in the present application, are to be served in the manner provided for under O.5 rr 1 & 2 CPR. See also Kanyabwera Vs. Tumwebaze S. C. C. A. No. 6 of 2004.

[10] In the instant case, in absence of any Application for extension of time to serve the Application, I strike out the Application with no order to costs for purposes of reconciling the family and therefore not escalate the conflict since the parties are all sons and daughters of the late Tibagwa Joshua who are fighting over his Estate,

Dated at Hoima this $\begin{matrix} \backslash \\ \text{matrix} \end{matrix} \mathcal{A} \backslash \mathcal{A} \end{matrix}$ day of August, 2023.

Byaruhanga Jesse Rugyema JUDGE

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