

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

MISCELLANEOUS APPLICATION NO.009/2009

IN THE MATTER OF THE ESTATE OF THE LATE YUSUF KALANZI OF BUWOOYA

L.C.I. JJUNGO SABAWALI

AND

IN THE MATTER OF AN APPLICATION FOR A CERTIFICATE OF OCCUPANCY BY

BEATRICE N. KALANZI

BEFORE: HON. LADY JUSTICE, MARGARET C. OGULI OUMO.

RULING

This is an application brought under Section 26 of the Succession Act Cap 162, Rule 1(1) of the Second Schedule to the Succession Act, Order 52rr1 and 3 of the Civil Procedure Rules S.I 71-1 and S.98 Civil Procedure Act Cap 71 in which the applicant is seeking for orders that:

- 1) A Certificate of Occupancy be issued to Beatrice Kalanzi.

The application is supported by the Affidavit of the applicant dated the 5th June, 2009.

The grounds of the application are:-

- 1) That the applicant is a widow of the late Yusuf Kalanzi who died intestate on the 9th April, 1980.
- 2) That the deceased Yusuf Kalanzi had his principal residential holding at Buwooya Block 527 Plot 41 where he resided together with the applicant.
- 3) That the applicant is entitled to occupy the residential holding as the wife (widow) of the late Yusuf Kalanzi.

4) That it is just and equitable that this application be allowed and the applicant be granted a Certificate of Occupancy.

At the hearing of the application, the applicant was represented by Mr. Tomusange Moses.

S.26 of the Succession Act provides that;

The residential holding normally occupied by a person dying intestate prior to his or her death as his or her principal residence or owned by him or her as a principal residential holding, including the house chattels therein, shall be held by his or her personal representative upon trust for his or her legal heir subject to the rights of occupancy and terms and conditions set out in the Second Schedule to this Act.

Part 1 of the Second Schedule to the Succession Act lists the persons entitled to occupy the intestate's house as under;

1 Persons entitled to occupation

1) In the case of a residential holding occupied by the intestate prior to his or her death, or her principle residence, any wife or husband, as the case may be, and any children, under eighteen years of age if male, and twenty-one years of age and unmarried if female, who are normally resident in the residential holding should be allowed to occupy it.

Under section 98 of the Civil Procedure Act, the High Court has inherent powers to grant such remedies as are necessary in the interests of justice and to prevent the abuse of court process.

In the instant case, Counsel for the applicant; Mr. Moses Tomusange, submitted that the applicant was married to the late Yusuf Kalanzi in a church ceremony, solemnization 1/01/1944 (See the Marriage Certificate on the court file attached as Annexure "A"). That by the time the deceased died on 9/4/1990, the applicant was residing with him at their matrimonial home at Buwooya in Busiro Block 527 Plot 41 at Kiumu, Wakiso District, as evidenced by the copy of the Certificate of Title on the court file attached as Annexure "B".

In view of the above, court is satisfied that the applicant is the widow of the deceased, is entitled to stay in the residential holding that she used to occupy with her husband, the deceased, in Busiro Block 527, Plot 41 at Kiumu, Wakiso District.

Consequently, the application is allowed and the applicant is granted the right of occupancy of the residential holding and the court makes no order as to costs.

MARGARET OGULI OUMO

JUDGE

4/09/2009

Present

1. Mr. Tomusange Moses-Counsel for the applicant
2. Ms.Nalongo Nandaula-Court Clerk
3. Nyakwebara Elizabeth-Research Assistant