

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT TORORO
MISCELLANEOUS APPLICATION 0010 OF 2022
ARISING FROM ADMINISTRATION CAUSE NO. 0099 OF 2017 OF
MBALE
ASEGOIT ANNA MARGRET ::::::::::::::::::::::::::::::::::: APPLICANT
VERSUS
1. EMEJJE JOHN
2. EMEJJE KEZEKIA
3. OKACUGA EMMANUEL ::::::::::::::::::::::::::::::::::: RESPONDENTS

RULING

BEFORE: HON. JUSTICE HENRY I. KAWESA

This is an application was brought by chamber summons under **Section 98 of the Civil Procedure Act Cap. 71; and Order 31 Rule 2 and 4 of the Civil Procedure Rules S.I No.1 of 71.**

The application seeks declaration/orders that:

1. Property/land at Kasoli East Village, Kasoli Parish, Eastern Division, Tororo Municipality, Tororo District is the applicant's residential holding/matrimonial property.
2. The applicant and her biological children are solely entitled to benefit from compensation from the Standard Gauge Railway project arising from its takeover of the land at Kasoli East Village, Kasoli Parish, Eastern Division, Tororo Municipality, Tororo District.
3. The respondents withdraw all monies received from Standard Gauge Railway Project as compensation for the property at Kasoli East Village,

Kasoli Parish, Eastern Division, Tororo Municipality, Tororo District and handover the same to the applicant within a period to be specified by court.

4. Costs of this application be provided for and paid by the estate.
5. Any other remedy the Honourable court deems fit.

The application is supported by the affidavit of the applicant; and supplementary affidavits of Orono Kenneth Nyapidi and Nyapidi Daniel Stephen. The application is only opposed through an affidavit in reply of the 3rd respondent.

The 2nd respondent filed an affidavit in reply admitting to the applicant's claim in its entirety. Accordingly, the determination of the application shall act on his admission, but only against him.

Furthermore, the 1st respondent did not file a reply. However, there is an affidavit of service on record, dated 7th of September 2022, showing that he was served with the application. The application shall proceed ex parte against him, therefore.

Background of the Application

The applicant is the biological mother of the 2nd respondent; and a step mother of the 1st and 3rd respondent. The respondents are biological sons of the late Okacuga Martin Emejje (**hereinafter the deceased**) who died on the 11th October 2016. The deceased was customarily married to a one Elizabeth Ajuo, a biological mother to the 3rd respondent; and a one Iseren Naume, the biological mother of the 1st respondent. The applicant also alleges that she was customarily married to the deceased in 1978. However, this is disputed by the 3rd respondent.

The deceased settled each of his wives and the applicant on different pieces of land located in different area. They exclusively occupied those lands as their matrimonial homes with their respective biological children. The applicant, in particular, occupied land situated in Kasoli East Village, Kasoli Parish, Eastern Division, Tororo Municipality since 1994 (**hereinafter the suit land**).

In the month of March, the year of 2015, the deceased was learnt that the suit land had been identified by the Ministry of Works and Transport for the Standard Gauge Railway Project. In that same year, on the 15th day of the same month, the deceased filled in an assessment form of the said project as a Project Affected Person (PAP) for purposes of compensation by the Ministry of Works and Transport. The form is attached to the affidavit in support of the application as AK1.

Under the Section 1 subsection 9 of AK1, entitled "Marital status" with options, namely, "married", "single", "widowed", "separated", and "divorced", the deceased ticked the "married" option. Under Section 2 subsection 1, entitled "HOUSEHOLD DETAILS/PROPERTY DETAIL" under the column entitled "Principle Residence" with options "Yes" and "No", the deceased ticked the "Yes" option. Further, under Section 2 subsection 2 of AK1, which is entitled "HOUSEHOLD MEMBERS", the deceased indicated the applicant as his spouse; listed only six children born to the applicant; and stated his next of kin as the applicant whom he also stated as his "Wife".

The deceased died before any compensation was made to him for the suit land by the Ministry of Works and Transport. Following his death, his clan members had three separate meetings which were held on the 16th of October 2016, 23th January 2017, and 10th November 2019 respectively. The minutes of the said meetings are attached to the supplementary affidavit of Orono Kenneth Nyapidi as annexure AK8, AK9, and AK10. Annexure AK8, in particular, shows that the respondents attended the meeting held on the 23rd of January 2017.

The minutes also indicate that the said clan members acknowledged the applicant as wife to the deceased; and her plight of lack of alternative accommodation due to the fact the aforesaid project had affected the entire suit land and yet compensation for it was still owing. Reference about this is made to minute 9.3 of AK7. Further, it was resolved by the said clan members, under minute 5.7

paragraph 7 and minute 6.7 of annexure AK8, that each respective “matrimonial home” of the deceased be left to have exclusive control of property belonging to it, and run as it was when the deceased was still alive; and that not family member should claim a benefit from a matrimonial home he or she does not belong to. Regarding the compensation for the suit land, clan members resolved it shall be directed to the affected persons (the applicant and her children) to enable their resettlement. This is under minute 6.5 of AK8 and minute 04/11/2019 of AK9.

On the 22nd day of March 2018, the respondents, upon the advice of clan members, jointly applied for and were granted letters of administration of the deceased’s estate by the High Court of Uganda at Mbale. In order to access compensation for the suit land, the respondents, acting as administrators, opened up an estate account in Centenary Rural Development Bank and notified Ministry of Works and Transport accordingly.

In April, 2021 or thereabout, Ugx.10,300,000 (Ten Million Three Hundred Thousand Shillings) was deposited into the said estate account as partial compensation for the suit land. Upon learning of the deposit, the applicant asked the 2nd respondent to liase with the 1st and 3rd respondents to withdraw the said money and hand it over to her in order to find alternative accommodation. The withdrawal was, however, did not happen for some reasons.

According to the affidavit in support, the 3rd respondent demanded that the applicant agrees that 50% (Fifty Percent) of the total deposit be taken by him and shared with the rest of the beneficiaries of the deceased’s estate as a condition precedent to the withdrawal. The applicant yielded to that demand for lack of choice, allegedly. On the 13th of June 2022, a withdrawal of the said deposit was made hence the applicant, through the 2nd respondent, receiving Ugx.5,700,000 (Five Million Seven Hundred Thousand Shillings Only) and the 1st and 3rd respondent went away with Ugx.4,508,000 (Four Million Five Hundred and Eight Thousand Shillings Only).

On the 22nd of June 2022, another deposit totalling Ugx.227,642,669 (Two Hundred Twenty Seven Million Six Hundred Forty Two Thousand Six Hundred Sixty Nine Shillings Only) was made on the estate's account by the Ministry of Works and Transport in compensation for the suit land. Subsequently, the applicant again reached out to the 3rd respondent, with a request to withdraw the said money and hand it over to her. But as it was with the first deposit, the 3rd respondent declined the applicant's request unless she agreed to cede Ugx.100,000,000 (One Hundred Million Shillings Only) to him.

By this application, the applicant seeks to have access to the entire deposit on the estate's account. She premised her claim on being a wife/widow of the deceased.

Applicant's Evidence

She averred that the compensation money from the Standard Gauge Railway Project is intended to assist a PAP like herself to find an alternative place. That the families to which the 1st and 3rd respondents belong were not affected by the project and continue to use land on which they were settled the deceased to the exclusion of her family.

That the 3rd respondent has since becoming an administrator bullied her and her children who are younger than him by refusing to cooperate in the smooth running of the deceased's estate. Further, that the 3rd respondent lives in Mutukula; and that whenever his presence is required to withdraw estate funds, he drags his feet and places conditions which include holding a family meeting of the whole extended family.

That the suit land qualifies as her matrimonial home/ residential holding and cannot be shared out in the course of distributing the estate of deceased. Lastly, that she will soon become homeless.

The applicant's evidence is corroborated by the supplementary affidavits of Orono Kenneth Nyapidi and Nyapidi Daniel Stephen, and the affidavit in reply of the 2nd respondent.

3rd Respondent's Case

He averred that the deceased bought the suit land for a commercial purpose not a matrimonial home. That is why it is plotted and he kept selling the plots to the neighbours. That the deceased just run to stay on the suit land because of an insurgence at his ancestral home area which threatened his life in the 1980s.

That there is Civil Suit No.57 of 2012 against the estate of deceased which is still pending at the Chief Magistrate's Court of Tororo at Tororo.

That the applicant is neither a beneficiary the estate of the deceased nor the owner of the suit land. That the deceased has never given the suit land to the applicant; and that the PAP is the deceased. That the estate's property includes the suit land; and that the compensation paid has to be distributed amongst the beneficiaries together with other properties.

Further, that during the family meeting held on the 14th of July 2017 before the Administrator General, it was agreed that all properties, including the compensation money, belonging to the estate be shared. That that all members present at that meeting, including the applicant, sanctioned the same by signing its minutes. A copy of the minutes is attached as annexure "B" to his affidavit in reply.

Furthermore, he erroneously included the applicant and only her children as beneficiaries in the assessment form (AK1) because he was living with her and was frail of health. That the applicant and her children forced the deceased to fill in the said form which was wrong and the same was corrected during the meeting at the Administrator General. That the applicant was also erroneously included in the list of beneficiaries because she was not married to his late father.

That all the land on which the family of the deceased lived was not owned exclusively as claimed by the applicant. That the area affected by the project includes other plots other than the one claimed by the applicant. That the family rejected the minutes under AK7, AK8, and AK9 which purport to give the suit land to the applicant.

Lastly, that even if the applicant's house is a matrimonial home, it still belongs to the estate of the deceased; and that upon her demise, it reverts back to the rightful beneficiaries, and so, she cannot own it to the exclusion of others.

Applicant's Rejoinder

She averred that she was customarily married to the deceased in 1978; and that her status as his wife/widow has often been recognised. That the deceased lived with her on the suit land as husband and wife up to the time of his death. That whereas the deceased sold parts of the suit land, the same was done with her consent and it was because they required school fees for her children.

That she is not aware about the existence of Civil Suit No.57 of 2012 pending at the Chief Magistrate's Court of Tororo at Tororo. That she has never consented to the sharing of compensation funds from the Standard Gauge Railway Project. Lastly, that the deceased freely stated her and her children as beneficiaries of compensation from the Standard Gauge Railway Project.

Issues for Determinations

Counsel for the parties filed written submissions. Two issues appear from the said submissions. These are;

1. *Whether the land at Kasoli East Village was the late Okacuga Martin's residential property?*
2. *Whether the applicant and her children are solely entitled to the compensation money from the Standard Gauge Railway Project?*

Law Applicable

It was noted that the deceased died on the 11th October 2016. Letters of administration for his estate were granted to the respondents by the High Court at Mbale on the 22nd day of March 2018. This means that the administration of the estate started way back before the amendment of the **Succession Act Cap.162** came into force. I state this because both Counsel, in their submissions, relied on the **Succession (Amendment) Act of 2022** while arguing the aforesaid issue. This is erroneous.

It is an established principle that the law does not apply retrospectively. I followed that principle in the case of **Wambewo Simon vs. Mazelele Silvester High Court Miscellaneous Appeal No.0128 of 2013**; and I have no reason to depart from it. Accordingly, the amendment should not be applied in this case since it came into force after administration of the estate of late Okacuga Martin Emejje commenced.

Consequently, the applicable law is the **Succession Act Cap.162**.

Resolution of the Issues

Issue No.1: Whether the land at Kasoli East Village was the late Okacuga Martin's residential property?

It is not in dispute that the deceased stayed on the suit land together with the applicant. The 3rd respondent in fact admitted to this under paragraph 2(h) where he stated that:

Our father has never given the said land to the applicant as claimed but as one with whom he had children they were living in our father's land but she cannot claim to be the owner of the land.

He further added, in admission, that the deceased occupied the house on the suit land prior to his death. This is under paragraph 2(k) of his affidavit in reply where

he stated that the late “*was living with her (the applicant) and was frail of health...*”

I already noted the contents of the assessment form under the background of this application. The form expressly supports the aforesaid statements. It shows that the deceased considered the suit land as his principal residence.

The contention of the 3rd respondent that the suit land was for commercial purpose not “a matrimonial home” is inconceivable. As Counsel for the applicant submitted, the fact that the deceased sold part of the suit land cannot negate the fact that the deceased, the applicant and her children lived on it as a family. I do not believe that the 3rd respondent is in a better position to describe the suit land (or was) than the deceased. The suit land is what it is. A residential holding as the deceased described it in the assessment form. Therefore, the court shall not dwell on this any further. It is its finding that the suit land is a residential holding of the deceased.

Issue one is found in the affirmative, therefore.

Issue No.2: Whether the applicant and her children are solely entitled to the compensation money from the Standard Gauge Railway Project?

The court takes cognisance of the fact that provisions of **Sections 2(n) (i), (ii), and 26; and Rules 1, 7, 8, and 9 of the Second Schedule of the Succession Act Cap.162** which apply to occupation of residential holdings by spouses were declared null and void by the Constitutional Court in the case of **Law and Advocacy for Women in Uganda vs. Attorney General, Constitutional Petitions No. 13 of 2005 and 05 of 2006**. Accordingly, the Court shall not apply them in determining the aforesaid issue.

Having excluded the specific provisions of the aforesaid Sections and Schedule, the court shall resort to its inherent powers under **Section 98 of the Civil**

Procedure Act Cap.71 and Section 33 of the Judicature Act Cap.13, and any other law applicable to the circumstances generally.

The court is also cognizant of a court practice which has followed the spirit of the provisions of the **Succession Act Cap.162** which were declared null and void by the Constitutional Court. The practice dictates that a spouse of an intestate shall continue to occupy residential holdings of their deceased spouses and continue to use the adjoining land. For instance, in **Hadadi Muhamed Rajab vs. Muzamil Muhamed Rajab & Others HCCS No.188 of 2015, Justice Ketra Katariisibwa Katunguka** found that *“the wives who were occupying the ‘residential holdings’ belonging to the deceased shall continue to occupy them and cultivate the adjoining land.”* In addition to that, the spirit of the current law still seeks to protect a spouse’s occupation of a residential holding, and other part persons. The spirit dictates that residential holdings of the intestate be held by his or her legal representative upon trust for his or her spouse and lineal descendants subject to the rights of occupation of people who were normally resident in the residential holding, including the spouse. This spirit was evident deduced from the **Succession (Amendment) Act of 2022 (See also, The Parliament of Uganda (2021). Consolidated Report of the Sectoral Committee On Legal and Parliamentary Affairs On the Succession (Amendment) Bill 2018 And The Succession (Amendment) Bill, 2019, p.16-17. Available at <https://parliamentwatch.ug/wp-content/uploads/2021/09...>)**. The court shall take all of this into account when resolving the issue under consideration.

However, before delving into issue, I shall first establish the applicant’s marital status. This is relevant to the issue, and it is evidently in dispute.

According to the applicant, she was customarily married to the deceased in the year 1978; and therefore a widow to the deceased. Her evidence of marriage is supported, in particular, by Orono Kenneth Nyapidi, the chairperson of the

deceased's clan; annexure AK1 where the deceased mentioned the applicant as his wife; and AK7, AK8, and AK9 where the applicant was acknowledged as a wife to the deceased by members of his clan. As such, I do not agree with Counsel for the 3rd respondent's submission that the applicant did not adduce any evidence to prove her alleged marriage to the deceased.

On the other hand however, the 3rd respondent disputes that the applicant was a wife to the deceased in his affidavit in reply.

It suffices to note that in the minutes of the meeting at the Administrator General (which are attached to the 3rd respondent's affidavit in reply as annexure "B"), the applicant is mentioned as a widow who was customarily married to the deceased. The 3rd respondent sanctioned the said minutes by his signature. He also signifies his approval of the said minutes under paragraph 2(g) and 6 of the affidavit in reply, without disputing the applicant's status as stated in the minutes. Furthermore, at page 4 of the 3rd respondent's submissions, the applicant is referred to as a surviving widow or spouse of the deceased who is entitled to a 20% share of the deceased's property. Thus, there is an inconsistency on the part of the 3rd respondent.

It is trite law that an inconsistency unless satisfactorily explained, will usually but not necessarily result in the evidence of a witness being rejected (**See Twinomugisha Alex and Others vs. Uganda, S. C. Criminal Appeal No. 35 of 2002 and Uganda vs. Abdallah Nassur [1982] HCB**). The gravity of the inconsistency will depend on the centrality of the matter it relates to in the determination of the key issues in the case (**Odur David vs. Ocaya Alphonse & Others High Court Criminal Appeal No.34 of 2018**).

In the instant case, the fact of whether the applicant was customarily married to the deceased is in dispute. That fact is very material to the issue under determination. In the essence, the inconsistency on the part of the 3rd respondent

is grave. It points to a probable deliberate untruthfulness of the 3rd respondent which court cannot ignore. In the absence of any explanation, the court rejects his evidence as far as the applicant's marital status is concerned. This leaves the applicant's evidence unchallenged. Consequently, the court finds that the applicant has, on the balance of probability, proved that she was a wife to the deceased.

I now turn to the issue under determination.

The applicant's evidence is that the deceased had three wives and each one of them exclusively lived on a particular piece of land. This is corroborated by the supplementary affidavits of Orono Kenneth Nyapidi and Nyapidi Daniel Stephen; annexure AK1; and minutes under AK7, AK8, and AK9. Annexure AK1 (assessment form for compensation), in particular, indicates a clear intention of the deceased to settle his three wives exclusively on different lands. This is so because the household members he filled in the said form, which touches the suit land, are only himself, the applicant and her biological children.

It was the 3rd respondent's evidence that applicant and her children forced the deceased to state only her and her biological children in the said form. But beyond his assertion, he provided no evidence to substantiate his assertion. For that reason, his assertion is rejected for lack of satisfactory evidence.

The two other residential holdings of the deceased are/were respectively occupied by his other two spouses (the 1st respondent and 3rd respondent's biological mothers). It is probable that these will be exclusively maintained for the said spouses and their biological children. The strength of this probability is to the extent that the minutes under AK7, AK8, and AK9 indicate that every residential holding of the deceased, including the one in this case, shall be exclusively maintained for members respectively belonging to them; but the 3rd respondent

averred that (only) the minutes which exclusively gave the suit land to the applicant were rejected at the meeting held at the Administrator General.

The minutes of the meeting held at the Administrator General's office (annexure "B") show that there was indeed a dispute concerning the compensation money in issue among beneficiaries of the deceased's estate at some point. However, they also show that those beneficiaries later on agreed to share the said money. The list of members when that agreement was reached shows that the applicant was present. Nevertheless, the court considers that agreement was erroneously made. I shall explain that.

Firstly, I reinstate for emphasis, a residential holding occupied by a spouse of an intestate should not be a subject of distribution during the lifetime of the spouse. Whereas such property ought to devolve upon personal representative of the deceased upon trust for those persons entitled to share it, it ought not to be distributed during the lifetime of the surviving spouse, among others, should he or she continue to occupying it. Fortunately, both Counsel appear to agree with this proposition at page 2 of their respective submissions; and pages 4 and 5 of Counsel for the 3rd respondent's submissions. It is also probable that the 3rd respondent agrees with the proposition as far as the two residential holdings occupied by his biological mother and biological mother to the 1st respondent are concerned. This is so because he does not reject the minutes in AK7, AK8, and AK9 which unequivocally preserved the said residential holdings exclusively for those people.

The 3rd respondent only disputes the residential holding occupied by the applicant. The root of the dispute appears to be because it was compulsorily acquired by Government, and there is compensation money paid for it. Had it not been for the compensation money, it is probable that this dispute would not arise. Counsel for the applicant approached well the dispute by asking, I quote:

Whether upon the death of Okacuga, the land at Kasoli East Village would have been divided and shared out to all the beneficiaries had the same not been alienated by the Standard Gauge Railway Project?

Further, had the compensation money been paid during the deceased's lifetime, it is highly probable that he would have used it to establish a matrimonial home, exclusively for himself and the applicant. That probability is based on his manifest intention of having separate matrimonial homes for his wives under the assessment form and practice; and the fact that the compulsory acquisition affected a matrimonial home/family land and, thus, he would be obligated by the law on matrimonial homes or family land to restore the said home or property using the compensation money (**Article 31(1) of Constitution of the Republic of Uganda, 1995; Sections 38A and 39 of the Land (Amendment) Act of 2004**). In view of this, the court's considered view is that the compensation money is not actually "compensation money" as far as the applicant is concerned.

The court rests the preceding proposition on the maxim that "*equity regards as done what should have been done*". This maxim means that when individuals are required, by their agreements or by law, to perform some act of legal significance, equity will regard that act as having been done as it ought to have been done, even before it has actually happened. In other words, where a party was under an obligation to perform an act, equity will consider the parties to be in the position where they would have been had the obligation been fulfilled. The maxim works in favour of the party who was entitled to that performance.

If one critically looks at the working of the maxim, he or she will realise the operation of doctrine of conversion as a consequence. The doctrine denotes the idea that equity regards what ought to be done, as done (**Attorney General vs. Hubbuck (1884) 13 Q.B.D. 275**). It generally takes two stages, namely, first, the creating, by the owner of the thing to be exchanged, of a right in another person to have the exchange made, with a correlative obligation to make the exchange,

and, secondly, the actual making of the exchange. Once this is satisfied, one type of property is deemed to be another type, by reason of an obligation to convert it from one form to another. Thus, where a person is under a binding obligation to sell land and convert it into money, or to invest a sum of money, in the purchase of land, equity regards that as done which ought to be done and treats the property as being in its converted state from the time when the obligation to convert arose (**Snell (1960). Principles of Equity. 26th ed., pp. 513-527**). In other words, equity deems there to be money and land respectively where the obligation has arisen, but the conversion to those forms has not yet occurred. The conversion is simply a pure fiction and is deemed to occur in order to do justice (**Attorney General vs. Hubbuck (supra) at p.289 as per Bowen LJ; Langdell, C. C. (1905). Equitable Conversion III. Harvard Law Review, 18: 4, p.246. Available at <https://www.jstor.org/stable/pdf/1323450.pdf>**).

In **Fletcher vs. Ashburer (1779) 1 Bro.C.C.497, 28 E.R. 1259**, for instance, Sir Thomas Sewell M.R. attempted to justify the development of the doctrine when he said that:

nothing was better established than this principle, that money directed to be employed in the purchase of land, and land directed to be sold and turned into money are to be considered as that species of property into which they are directed to be converted; and this in whatever manner the direction is given: whether by will, by way of contract, marriage articles, settlement or otherwise, and whether the money is actually conveyed or only agreed to be conveyed; the owner of the land, or the contracting parties, may make land money or money land. The cases establish this rule universally.

I have not found any decision of court, as far as the said maxim and doctrine is concerned, with facts similar to the instant case. Most of the decisions are in respect to contracts of sale of land where the buyer is deemed to possess a legal

title the moment a contract of sale is made, but before vendor transfers title. These include the locus classicus case of **Lysaght vs. Edwards (1876) 2 CHD 449**, **Walsh v Lonsdale (1882) 21 Ch. D 9**, among others.

In **Lysaght vs. Edwards (supra)** for instance, a testator entered into a valid contract for sale of his farm but died before transferring legal title. He left a Will leaving the farm to his wife. The buyer sued claiming an interest in the farm and his claim succeeded. The court held that as soon as the contract became enforceable, the testator held the farm on trust for the buyer; and that the testator only had a right to the money. In **Walsh vs. Lonsdale (supra)**, the defendant, Lonsdale, agreed to grant the claimant, Walsh, the lease of a mill for seven years, the rent to be paid quarterly in arrears with a year's rent payable in advance if demanded. The parties did not execute a deed for the grant of the tenancy, but the claimant moved in and paid rent quarterly in arrears. The defendant then demanded a year's rent in advance. The claimant refused to pay arguing that under common law rules, a lease had to be created by deed to be legal. Premising itself on the maxim, the court treated the parties as having a lease enforceable in equity from the date of the agreement to grant the lease and allowed the defendant to distrain the claimant's goods in satisfaction of the debt. Lord Jessel stated:

The tenant holds... under the same terms in equity as though the lease had been granted... He cannot complain of the exercise by the landlord of the same rights as the landlord would have had if a lease had been granted.

Several decisions of this jurisdiction have clearly followed the said maxim of equity. These include, the famous Supreme Court decision of **Ismail Jaffer Alhbhai & 2 Ors vs. Nandlal Harjivan Karia & Anor SCCA No.53 of 1995**; **Serunjogi vs. Katabira [1988-90] HCB 148**, among many others.

In succession causes, where the deceased, in his life time, was under an obligation either to lay money for the purchase of land or to sell land for money and this obligation was not carried out before his or her death, the said maxim and doctrine have been found relevant in the determination of the deceased's rights as regards that obligation and a fortiori, the rights of those interested in his or her realty (land) and personalty (money). A case which comes close to that proposition is **Sweetapple v. Bindon (1705) 2 Vern. 536, 23 E.R. 947**. In that case, a testator bequeathed £300 to be laid out in the purchase of land and settled to the use of her daughter and her children, and that if her daughter should die without issue, the land should go over. The daughter died without issue and no purchase of the land had been made with the £300. The husband of the daughter claimed to be tenant by courtesy of the fund of £300—a tenancy by which a widower was entitled to his deceased wife's land. The claim was upheld, though the purchase of land had not been made. By the doctrine of conversion, the money was regarded as land.

It suffices to state that conversion at equity takes two forms in succession causes. One is a direct equitable conversion, which exists only for the purpose of changing the devolution of the property which it affects, and so it exists only for an instant of time. Thus, when a direct equitable conversion has once accomplished its purpose of causing money, for instance, to devolve as if it were land or land as if it were money, the fiction ceases, and henceforth equity regards the money as money and the land as land. The immediate object of the direct equitable conversion is to cause a thing to devolve, on the death of its owner, not according to its true nature and quality, but according to the nature and quality which equity, by a fiction, attributes to it, for example, to cause land to devolve as if it were money or money as if it were land (**Langdell, 1905, pp. 246, 248**).

The second one is an indirect equitable conversion, which comes into existence by the creation of a right to have an actual conversion made (**Langdell (1905, at**

pp. 248) The conversion continues to exist until that right is specifically enforced, or otherwise ceases to exist; and continues to exist:

not according to the legal nature of the right, i.e., as a chose in action, but according, to the nature and quality of the thing to be acquired by the exchange, for example, to cause a right to have land exchanged for money, to devolve as if it were money, or to cause a right to have money exchanged for land to devolve as if it were land (Langdell, 1905, at pp. 246).

Thus, whereas a direct equitable conversion is caused by creation of an absolute right in the thing converted, and the right created is absolute; an indirect equitable conversion is caused by creation of a relative right in the thing, and the right created is relative itself (**Langdell, 1905, at pp. 248**).

In this case, the two forms and the two stages of conversion are evident.

The first form involved, firstly, the creation of a right by the deceased in the Ministry of Works and Transport to acquire the suit land for compensation money from the said Ministry, and, secondly, a mutual agreement between the deceased and the said Ministry; and the second form involved, firstly, the creation of a right by the applicant in the deceased to receive compensation money for a matrimonial home or family land somewhere else, and, secondly, a mutual agreement between the deceased and the applicant. The mutual agreements, in both instances, are indicated by the assessment form/ annexure “AK1” which the said Ministry supplied to the deceased, and which the deceased filled by stating the suit land as his principal residence, the applicant as his wife and next of kin, and only the applicant’s children as household members. Accordingly, the first form of conversion was a direct equitable conversion; and the second one of conversion was an indirect equitable conversion. This is so because with the first form, the suit land became compensation money with regard to the deceased/his estate and continued to be so until it was actually paid to his estate. With respect to this, the 3rd respondent and his Counsel are right to say that the compensation money

belongs to the deceased's estate. However, with respect to the second form, the compensation money became a "matrimonial home or family land" because of the applicant's continued right against the deceased to have the compensation money exchanged for such for her occupation of the same.

Counsel for the 3rd respondent argued that a residential property is not the same as matrimonial property as the two are governed by different laws. This is true. However, the court doubts that Counsel would dispute that matrimonial property may be such during the spouses' lifetime under family law, and then become a residential holding upon intestacy of any of them under succession law—provided they occupied it as a home prior to the death.

In this case, the suit land was occupied by the applicant and the deceased prior to his death as a home. As such it is now a residential holding and succession law can be appropriately applied to it.

By this application, the applicant is unwittingly enforcing her continued right of occupation of her matrimonial home or family land—which is now a residential holding—against the deceased's estate (**Sections 38A and 39 of the Land (Amendment) Act of 2004**)). All she seeks from the estate is having the compensation money converted into "a residential holding" for her to occupy the same. Her Counsel agreeably submitted, the compensation money was intended to restore her and her children to their original position of having a home. In his submissions, Counsel reached the same conclusion as Court, albeit not basing on equity as a means to that end. That end is that the compensation money is "a residential holding" of the deceased at equity, since he ought to have done so had he lived.

Because spouses ought to continue occupation of residential holdings of intestates, the applicant is entitled to occupy the "compensation money"—a fiction of a residential holding. Furthermore, because residential holdings ought

not to be distributed while being occupied by the intestate's spouse, it would be unjust improper to permit the respondents to distribute the "compensation money" to any beneficiary of the deceased's estate. As Counsel for the applicant put it, permitting such an act would be sending the applicant to the streets while the other deceased's spouses and their biological children continue to exclusively enjoy the deceased's other residential holdings. For that cause, therefore, the 3rd respondent and his Counsel's submission that the "compensation money" ought to be distributed to the beneficiaries' estate of the deceased is rejected.

The aforesaid findings do not entitle the applicant to any ownership in the "residential holding" (in the form of compensation money). To this extent, I agree with the submission of the 3rd respondent's Counsel argued at pages 2 and 4.

The applicant's right to it is only limited to occupation of the same. Practically, this suggests that she ought to acquire a residence, or acquire land and construct a residence equivalent to the compensation money. The ownership of any such residence ought to devolve upon the administrators of the deceased's estate upon trust for those interested in it and who may wish to view it as money at equity.

The above said, I am mindful of the spirit of the parties and the family members of the deceased to maintain the affairs of each of the deceased's three residential holdings to the respective members belonging them. It was in that spirit that the three respondents, who belong to three respective residential holdings, were recommended for appointment as administrators by the family and clan members of the deceased as evidenced by minutes 11.2, 11.4, 11.5, and 11.9 of annexure AK7; minutes 5.3, 5.7 paragraph 7, 5.9.1, 6.5, 6.6, 6.7, and 6.10 of AK8; and minute 3.2, and 3.3 and reactions thereto of AK9. This was certainly a proper approach given the polygamous aspects of the deceased's estate.

In this case, the deceased's "residential holding" is represented by the 2nd respondent in the administration of his estate. In view of the preceding

paragraphs, it is the court's considered view that the compensation money ought to be maintained with the residential holding represented by the 2nd respondent to hold the same upon trust for those entitled to it upon the cessation of the applicant right of occupancy. This now settles the lingering matter about the ownership of that residential holding.

In conclusion, therefore, the court finds that the applicant and her children are solely entitled to the compensation money from the Standard Gauge Railway Project. The issue is found in the affirmative as well.

Remedies

In view of the findings above, the court grants the orders sought, but with necessary modifications to some, as herein below;

1. Property/land at Kasoli East Village, Kasoli Parish, Eastern Division, Tororo Municipality, Tororo District is the late Okacuga Martin Emejje's residential holding which the applicant is entitled to occupy as a spouse.
2. The applicant and her biological children are solely entitled to benefit from compensation from the Standard Gauge Railway Project arising from its takeover of the land at Kasoli East Village, Kasoli Parish, Eastern Division, Tororo Municipality, Tororo District.
3. The respondents shall withdraw all monies received from Standard Gauge Railway Project as compensation for the property at Kasoli East Village, Kasoli Parish, Eastern Division, Tororo Municipality, Tororo District and handover the same to the 2nd respondent and the applicant within 14 days of this ruling without fail.
4. Each party shall bear its own costs. The purpose of this order is to alleviate the suffering of the estate from unnecessary costs.

Before taking leave of the matter, the court wishes to state that it noted the 3rd respondent's averment that the applicant collected and keeps collecting money

from the deceased's rental premises at Malaba; and that she has not accounted for it. However, the court was unable to delve into the merits of the said averment because of the manner in which it was raised. The matter ought to have instituted an independent cause by the respondents against the applicant rather than raising it in an affidavit in reply.

The other concern raised by the 3rd respondent was a suit allegedly pending before the Chief Magistrate's Court of Tororo at Tororo vide Civil Suit No.57 of 2012. The court was also unable to entertain this suit because of lack of evidence showing its nexus with this application.

Delivered at Tororo this...6th... day of June..... 2023.

In the Presence of:

1. Counsel Akach - Robinson for Applicant.
2. Applicant present.
3. 2nd Respondent.
4. Christopher Okech - Court Clerk

HENRY I. KAWEESA

JA Justice