

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT FORT PORTAL**

**HCT – 01 – CV – LD – MA 0020 OF 2018**

**(Arising from Civil Appeal No. 0052 of 2005)**

5 **(Arising from Kyenjojo District Land Tribunal Claim No. 032/2003)**

**KIIZA LABAN..... APPLICANT**

**VERSUS**

**KABAJUNGU JOWERIA.....RESPONDENT**

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**BEFORE: HIS LORDSHIP MR. JUSTICE WILSON MASALU MUSENE**

**RULING**

This was an application by Kiiza Laban, the Applicant against Kabajungu Joweria the Respondent **under Sections 49, and 98** of the Civil Procedure Act, **Order 22 Rules 82, 83, 84, 85, 86 and 89** of the Civil Procedure Rules. The Application was seeking for orders that;

1. An order of vacant possession or eviction order issues against the Respondent and or her agents and any other person claiming under her authority from a plot of land with developments thereon at Kyenjojo Town Council.
2. The Respondent be committed to Civil Prison for obstructing possession of immovable property.
3. The Respondent pays the costs.

The Applicant was represented by Mr. Richard Bwiruka, while the Respondent, Kabajungu Joweria was unrepresented and was not present at the hearing upon being satisfied that the Respondent was duly served but failed and/or refused to attend Court, the Applicant was allowed to proceed exparte. Counsel for the Applicant made reference to the affidavit in support sworn by the Applicant, emphasising that the Applicant purchased the land with its developments in Civil Appeal No. 52 of 2005. The sale agreement, Annexure “A” by the

bailiff and Annexure “B” the Report of execution were attached. It was also submitted that the Respondent was duly notified about the execution process but she refused to vacate the premises in question.

Reference was also made to the warrant of vacant possession and Counsel emphasised that the Applicant paid a total of UGX 45,000,000/=. Mr. Bwiruka further submitted that part of that money was paid to Counsel for the judgment creditor and the balance UGX 35,542,000/= was deposited in Court on 22<sup>nd</sup> November, 2017 for the Respondent.

I have carefully considered the brief submissions by Counsel for the Applicant. I have also read the judgment in HCT – Civil Appeal No. 52 of 2005, whereby the Honourable Justice Rugadya Atwoki decided in favour of the Appellant then, Akugizibwe Patrick and against the Respondent now, Joweria Kabajungu. His Lordship concluded that from the evidence by then, it was clear that the Respondent sold part of her Plot 15 and part of her Plot 17 to the Appellant, Akugizibwe Patrick. That judgment was delivered on 28.1.2010, and it is on Court record. The Respondent never appealed against that judgment to the Court of Appeal of Uganda.

I have also studied the execution documents Annexure “A” to the affidavit in support of this application whereby the Applicant now, Kiiza Laban was the highest bidder and paid UGX 45,000,000/= and the report of the Court Bailiffs, Annexure “B” is very clear and elaborate. It is dated 21.11.2010.

In the premises and in view of what I have outlined, and on the basis of the Law cited by Counsel for the Applicant, I do hereby allow the application with costs.

I do hereby issue an order of vacant possession in favour of the Applicant, Kiiza Laban and against the Respondent, Kabajungu Joweria, her agents and/or any person claiming under her authority from the land situate at Kyenjojo Town Council which was in dispute in Civil Appeal No. 52 of 2005.

I decline to commit the Respondent to Civil Prison since she has lost the land in question and imprisoning her would be double punishment. However, I award costs of this application to the Applicant.

Lastly, I order that the sum of UGX 35,542,000/= deposited in Court be handed over to the Respondent, Kabajungu Joweria.

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**WILSON MASALU MUSENE**

**JUDGE**

5 **12.7.2018**

Applicant present.

Counsel for Applicant present.

Beatrice Katusabe, Court Clerk present.

**Court:** Ruling read in open Court.

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**WILSON MASALU MUSENE**

**JUDGE**