

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
MISC. APPLICATION NO. 384 OF 2018
(ARISING FROM CIVIL APPEAL NO. 33 OF 2016 AND DIVORCE
CAUSE NO. 11 OF 2016 CHIEF MAGISTRATES COURT OF
KAMPALA NAKAWA)**

NAMULI DAISY..... APPLICANT

VERSUS

EDWARD TIBAHWERAYO RESPONDENT

RULING

BEFORE: HON. LADY JUSTICE KETRAH KITARIISIBWA KATUNGUKA

Introduction

[1] This Application is brought by Namuli Daisy under S.6 and S.7 of the Evidence (Banker's Books) Act and O.52 r 2 CPR S.I 71-1, by way of Notice of Motion, for orders that; the applicant be granted leave to inspect the records of the following bank accounts for the periods of 3 years (2007 – 2010)

- Housing Finance Bank Ltd Nakasero and Housing Finance Bank Ltd Kampala Road Branch both in the names of the respondent's loan account,
- Barclays Bank Luwum Street (in the names of the applicant);

that court makes such further orders with regard to the said accounts as it deems fit and for costs to be provided for.

[2] The grounds for the application are detailed in the affidavit of the applicant and are briefly that the parties have been granted a decree nisi; that at the centre of the property wrangle is a house at Bugolobi known as Flat No. 18 D 3 Unit No. 27 Condominium Plan No. 044 Block A, Leasehold Plot 19-23

Luthuli Rise, Bugolobi, Kampala which was bought by the family in 2007, at UGX 38,000,000 of which the Applicant paid through Housing Finance Bank Ltd into an account of the Respondent; that the Applicant does not know the account numbers as she handed the payment receipts to the respondent and that it's in the interest of justice that court grants leave to inspect copies of Edward Tibahwerayo's loan/mortgage account in Housing Finance Bank, Nakasero Branch and Kampala Road Branch and the Applicant's account with Barclays Bank, Luwum Street Branch.

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[3] The applicant is represented by John F. Ssenooba & Co. Advocates who made written submissions to the effect that the Bankers' books are needed to confirm that the applicant was the one with the money while the respondent had none. He cited S.6 of the Evidence Act and argued that the bank records are facts which occasion the cause or the effect immediate or otherwise relevant facts to the facts of this case.

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I have considered the application, the supporting affidavit and the submissions by counsel.

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[4] The facts are that the respondent, former husband to the applicant filed a memorandum of appeal challenging the magistrate's holding in DC No. 11 of 2016 concerning the property in Kinawataka Mbuya, the ownership of the shop at Ben Kiwanuka Street and its acquisition of other property during the subsistence of the marriage, the 5 shops at Kalamba Trading Center and a farmhouse at Kibuulu Kiganda Mubende district, in view of the concepts of matrimonial, marital and joint property. The applicant wishes to bring evidence to wit bank records of both the respondent and herself for the period of 2007 – 2010 to show that the respondent had no money and she paid the mortgage for the house in Bugolobi.

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[5] I appreciate the law on facts which are the occasion, cause or effect of facts in issue under S.6 of the Evidence Act, the law on tendering in Bank records and the principle of law that he who alleges must prove.

The issue for determination is whether the application has merit.

5 [6] The grounds of appeal are as detailed above. The ownership of the house in Bugolobi was finally decided and it does not feature in the appeal. The evidence the applicant seeks to be allowed to adduce is not only additional but also not relevant to the grounds of the appeal and in no way occasion, cause or effect, immediate or otherwise, or are relevant in the occurrence of
10 the facts leading to the grounds of appeal. I have failed to see how they would show/clarify the ownership of the property the subject of the appeal. It is also not clear that this evidence was not/could not be availed during the hearing of DC No 11/2016.

[7] The application therefore has no merit. It is hereby dismissed.

15 The applicant shall bear the costs since it was ex parte.

Dated at Kampala this 12th Day of September 2019.

KETRAH KITARIISIBWA KATUNGUKA

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JUDGE