

**IN THE HIGH COURT OF UGANDA AT KAMPALA
(FAMILY DIVISION)**

TUMUKWASIBWE EVAS :::::::::::::::::::::::::::::::::::::: APPLICANT

TUMUKWASIBWE BROAD :::::::::::::::::::: RESPONDENT

1.0 Introduction

1.A declaration that the property comprised in Kibuga Block 12 Plot 493 land at Mengo and Kibuga Block 12 Plot 897 land at Mengo are jointly owned by the Applicant and the Respondent.

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- 3. An order directing severance and partition of the land and the developments comprised in Kibuga Block 12 Plot 493 Land at Mengo and Kibuga Block 12 Plot 897 land at Mengo to enable the applicant register her portion in her names and/or either of the property in her names.**
- 4. A permanent injunction restraining the respondent from interfering with the applicant's proprietary rights in the suit land and property.**
- 5. Costs of the application be provided for.**

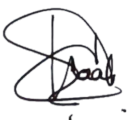
1.2 The grounds of this application are explicated in the affidavit in support of the Notice of Motion briefly that;

- 1. The land comprised in Kibuga Block 12 Plot 493 and Kibuga Block 12 Plot 897 land at Mengo is jointly registered in the applicant's and respondent's names as joint owners having been registered as proprietors on the 28th September, 2009 vide instrument number KLA 430712 and 22nd May, 2014 vide instrument No. KCCA00007064 respectively.**
- 2. Both plots are developed with commercial buildings and fetch a monthly rent to a tune of sixty five million shillings (65,000,000/=) altogether.**
- 3. The applicant and the respondent are husband and wife whose marriage was solemnized on 19th October, 1991 at Kabale Diocese. They have six children (including adults). They have lived separate lives for over 10 years.**
- 4. The parties jointly purchased land comprised in Kibuga Block 12 Plot 493 in 2009 out of funds from their joint account in Centenary Bank Account No. 2120100349 which**

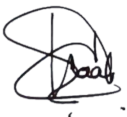


accumulated from proceeds of the applicant's sorghum business.

5. The applicant with the consent of the respondent applied for and was on 23rd November, 2011 granted a loan from Centenary Bank using the joint account amounting to One Hundred Twenty Million Shillings (120,000,000/=) and mortgaged the suit land comprised in Kibuga Block 12 Plot 493 which the Respondent only appended his signature upon being promised a commission of Ten Million Shillings (10,000,000/=) which he received.
6. The obtained loan only built the formation of the storied building and the ground floor. On 5th February, 2017 the applicant obtained another loan facility of UGX 496,000,000/= (Four Hundred Ninety-Six Million Shillings) from Hidestin Logistics limited and used the same single handedly to add the 1st and 2nd Floor on the subject property making it in total three floors all comprising of commercial suites.
7. In 2013, the parties purchased another piece of land comprised in Kibuga Block 12 Plot 897 that was also registered in their names as joint owners and the squatter on the land a one Mbogo was compensated by the Applicant.
8. A Divorce Cause No. 60 of 2018 was filed in the Magistrate Court of Mengo which decreed the suit property comprised in Kibuga Block 12 Plot 493 to the Applicant having solely developed the suit land.



- 9. On 10th February, 2022, the Applicant with the knowledge and sanction of the Respondent who acted as the guarantor applied for a loan from Finance Trust Bank which was used to develop the Kibuga Block 12 Plot 897 with stores, mortgaged her personal property/land as security for the loan.**
- 10. On 1st March, 2022, the Respondent together with some of their children in violation of the court order assaulted the applicant, evicted her and forcefully took possession of the suit properties and they have solely benefitted from to the property at the exclusion of the applicant who they have despite ownership of the property, denied access.**
- 11. The Decree Nisi was set aside by the High Court (Family Division) vide Revision Cause No. 2 of 2022 and directed the parties to go back to the state they were before the judgement of the Magistrate Court.**
- 12. The status before the ruling of the High Court was that the applicant was in possession and management of the suit properties that she solely developed and used the rent collected to finance the loan obtained from Finance Trust Bank to develop the properties on Kibuga Block 12 Plot 897.**
- 13. The applicant has since been issued with a defaulted in payment of the loan notice which is as a result of being denied access to the building to collect rent that was meant to facilitate the loan which she obtained to construct the stores on one of the suit properties.**

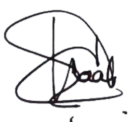


- 14. The Respondent's acts of denying the applicant access to her property are in violation of the applicant's constitutional right to own property as the respondent continues to solely benefit from the suit premises.**
- 15. The applicant has a unilateral right to seek severance of the title without consent of the other non-severing owner and the court has capacity to grant the said order.**
- 16. The applicant has a fundamental right to benefit from her property.**
- 17. The resolutions by the Respondent and other organs for him to continue accessing and managing the properties despite being co-owners amounts to an infringement of the applicant's right to use and enjoy her property.**
- 18. The court has power to sever the titles and order for the independent management and control by either of the owners and not one at the exclusion of the other.**
- 19. It is only fair, just and in the interest of administration of justice that the application be granted to guarantee to the applicants right to own property.**


1.3. The Respondent opposed the application in his affidavit in reply where he described it as bad in law/prolix/frivolous/vexatious, abuse of Court process, was brought prematurely and does not disclose any merit(s) or ground against the Respondent to have the Orders prayed for.



- 1.3.1 The applicant is not entitled to any relief and the respondent would raise a preliminary objection during trial and to have the Applicant's Application dismissed with costs.
- 1.3.2. In further answer to the affidavit of the applicant, the respondent averred that the parties celebrated their marriage on 26th October, 1991, however, the Applicant deserted the matrimonial home comprised in Kibuga Block 12 Plot 493 land at Kisenyi and in 2016 she left to live with another man named John Erick Ssigwa at Kikoni Makerere Kampala. During their marriage, the parties were blessed with 6 children who are in the Respondent's custody.
- 1.3.3. He stated further that the applicant is aware that the Rent money received from the said property is being used to construct the 2nd Floor, support the children that are still in school to further their education, feeding, medical care, pay property rates to KCCA, utility bills, taxes, renovation of damaged parts and general maintenance of the said property.
- 1.3.4. He also stated that the Decree Nisi issued by court in Divorce Cause No. 60 of 2018 at Mengo Court was reviewed and set aside by the High Court vide Revision Cause No. 002 of 2022.
- 1.3.5. After the decision of the High Court, the parties dispute was referred to Equal Opportunities Commission instead of the Applicant appealing to a higher court and at the commission, the Respondent was ordered to pay the Applicant a monthly sum of UGX 15,000,000/- (Fifteen Million) for maintenance yet the Applicant is staying in another man's house.



- 1.4. The respondent further averred that, the land comprised in Kibuga Block 12 Plots 493 & 897 is registered in both names since 28th September, 2009 vide Instrument No. KLA430712 and 22nd May, 2014 vide Instrument No. KCCA00007064. The said properties were acquired using their joint savings in Account No. 2120100349 held in Centenary Bank for the period running from 1st January, 2017 to 12th February, 2019.
- 1.4.1. That the parties obtained a bank loan of UGX. 120,000,000/= (One Hundred and twenty million shillings only) from Centenary Bank to finance the construction of the ground floor of a proposed two storied building located at Plot 493 Block 12, Kibuga Kampala District, the said amount was paid to zero balance.
- 1.4.2. The Respondent never earned a commission of UGX. 10,000,000/= (Ten Million Shillings) as alleged by the Applicant.
- 1.4.3. The Applicant was in charge of collecting rent from the premises for a period of six years at a monthly rent of UGX. 65,000,000/= translating to a yearly rent of 780,000,000/= and totaling up to 4,680,000,000/= per annum (Four Billion Six Hundred Eighty Million only) that she has never accounted for.
- 1.4.4. That the Applicant took possession of two (2) Duplicate Certificates of titles to the properties described herein, keys for the property, agreements, building plans and national identity cards and yet it was agreed that the titles be deposited in the bank for safe custody.
- 1.4.5. The Applicant used the rent collected since 2016 from the suit property to acquire properties comprised in Kibuga Block 12 Plots 1079, 1369



& 1080 land at Mengo, Kisenyi registered in the names of the Applicant since 13th November 2019 and land comprised in Busiro Block 383 Plots 5644 & 5645 land at Kitende Wakiso District registered on 18th May, 2021 and 20th May 2021 respectively wherein the Respondent claims interest.

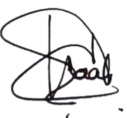
1.4.6. On 5th February 2017, the Applicant obtained a loan of UGX 496,000,000/- from Hidestin Logistics Ltd payable by 05th February, 2022, without the knowledge and authorization of the Applicant and the Respondent does not know what the Respondent used that money for.

1.4.7. That the Respondent is the one financing the construction of the 2nd Floor of the building contrary to what is alleged by the Applicant.

1.5. The Applicant applied and obtained another loan from Finance Trust Bank using her personal properties where a mortgage was registered on land comprised in Busiro Block 383 Plots 5644 & 5645 land at Kitende Wakiso District on 31st August, 2022 which was not sanctioned by the Respondent.

1.5.1 The resolutions of the Equal Opportunities Commission have been appealed against by the Respondent as the dissatisfied party and there is no way that the Respondent can be infringing on the 1.6. Applicant's right to use and enjoy property as alleged by the Applicant.

1.7. That it is not true that the Applicant used the loan to construct the property but instead she used it for her own benefit.



- 1.8. That the applicant and the Respondent are not yet divorced and therefore the said property cannot be separated or severed as claimed by the Applicant.
- 1.9. That it is in the interests of justice that this Miscellaneous Application is dismissed with costs.

2.0 Representation.

- 2.1 At the hearing, the Applicant was represented by Mr. Musa Kabega assisted by Ms. Atulinda Majda of M/S Kabega, Bogezi & Bukenya Advocates, who attended and participated in the Locus visit.
- 2.2 The Respondent was represented by Mr. Mugisa Ronald of M/S Barungi Baingana & Company Advocates, Kampala who also attended the locus visit on 18th August, 2023.
- 2.3 Both learned counsel based their arguments in the respective affidavits herein above and cited a number of authorities that have assisted me in determining this application.

3.0 Issues to be determined by this Court.

1. Whether the application is properly before Court?
2. Whether the suit properties comprised in Kibuga Block 12 Plot 493 and Kibuga Block 12 Plot 987 are held in Joint Tenancy by the Applicant and the Respondent?
3. Whether there are grounds that merit severance of the Joint Tenancy?
4. What Remedies are available to the Parties?

3.1. Submissions by Counsel.

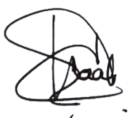
- 3.2. Both Counsel agreed to file written submissions. I appreciate Counsel's effort to have the matter resolved in favor of their respective party. I



have carefully perused the record and considered the submissions by both learned counsel in determination of this application.

4.0. **Locus in quo Proceedings.**

- 4.1. This court conducted a locus visit guided by Practice Direction **No.1 of 2007** issued to provide guidelines to litigants, counsel and the judicial officers on how locus in quo proceedings should be handled. **See; Bongole Geoffrey & Others versus Agnes Nakiwala CACA No. 0076/2015.**
- 4.2. **Order 18 of the Civil Procedure Rules SI 71-1**, prescribes the procedure for conducting and hearing of Civil Suits and examination of witnesses. **See Nagidde Rebecca v Mwasa Charles Steven (Civil Appeal No. 160 of 2018) [2020] as decided by Hon. Justice Egonda Ntende.**
- 4.3. The locus in quo proceedings were conducted on 18th August, 2023 at Kibuga Block 12 Plot 493 and Kibuga Block 12 Plot 897 at Kisenyi, starting at 11:00am (See **Order 18 Rule 14 of The Civil Procedure Rules SI 71-1** which provides that the Court may at any stage of a suit inspect any property or thing concerning which any question may arise). The Court deemed it necessary to visit the locus-in-quo and the parties, their witnesses were informed to be in attendance on the said date. **(David Acar & 3 others v Alfred Acar Aliro (1982) HCB 60).**
- 4.4. Present at the locus visit were, both parties in this application, Ainebyona Victor (their son), Atulinda Majda and Turyamureba Sharif Shaban counsel for the Applicant, Kakande Godfrey, Chairman of the area, Kiggundu Hamza, a friend to the Applicant, Nalweyiso Faridah, the area councilor and Mugisa Ronald, Counsel for the Respondent.



- 4.5. The Locus visit had to be conducted to ascertain the status of the suit land, the court was informed by the respondent during the hearing 13th July, 2023 that the matrimonial home occupied the 3rd floor and 2 of their children occupied all of the 2nd floor whereas most of the shops (units) on the ground floor were vacant which the applicant opposed and hence a locus visit to confirm the status was necessitated. The purpose of locus proceedings was to enable court check on the evidence given by the parties in court, and not to fill gaps in their evidence for them **(see Fernandes V Noroniha [1969] EA 506\ De Souza v. Uganda [1967] EA 784\ Yeseri Waibi v. Edisa Byandala [1982] I1CB 28 and Nsibambi v. Nankya [1980] HCB 81).**
- 4.6. At the locus visit, this court had the opportunity to check on the evidence already adduced in court by the witnesses particularly on the physical state of the subject matter. The court was able to see the physical structure of the storied building with three floors. The court inspected all three floors of the storied building, including the second commercial building. The court interviewed all the tenants of the properties inquiring on how rent is paid and to whom plus the vacancy.
- 4.7. The court was able to visit the property alleged to be the matrimonial home of the parties. This gave the court a clear view of the physical aspects of the evidence so as to enhance the oral testimonies and it enabled court to see the property as described in the parties' affidavits, their use, boundaries and location.
- 4.8. At the locus visit, I made the following observations;
- a) The said 2 plots of land are developed with commercial buildings which are occupied by tenants.



- b) The 2 adult children of the parties do not occupy the whole of 2nd floor as alleged with their minor sibling Emmanuel.
- c) Of the two children, one was married (Ainebyona Victor-son) and did not stay at the property, while the other (Rachel-daughter) was in a relationship with 2 children and the father to the children did not stay at the property. The alleged unit that the daughter claimed to be her home actually belonged to another lady a tenant.
- d) One of their minor son Emmanuel had returned from school and actually allegedly shared a room with 3 adult males, the conditions were pathetic to raise a child and a custody order was granted to the Applicant to live and maintain the child.
- e) The applicant wants the suit properties severed and partitioned so that each party gets their share.
- f) The alleged matrimonial home was actually an office that had been converted into a home belonging to a security company.
- g) One commercial building is composed of 26 units in total with 3 floors.
- h) The respondent is currently managing the suit properties including rent collection. The respondent is supported by his son to collect the rent.
- i) The 3rd floor had a church much it was not accessed but it was vivid through the open windows one could see a church like set up.
- j) There is no ongoing construction on the 2nd commercial building that initially had one floor.

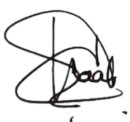


k) The local area leadership knew about the rift between the applicant and respondent.

5.0. **Determination by Court.**

Issue One. Whether the application is properly before Court?

- 5.1. The Applicant relied on **Article 50 (1) of the Constitution of the Republic of Uganda** which provides that any person who claims that a fundamental right or freedom under this constitution has been infringed or threatened, is entitled to apply to a competent court for redress which may include compensation.
- 5.2. The applicant relied on **Article 26 of the Constitution** and stated that the Applicant has a constitutional right to own property individually or in association with others and she can therefore not be compulsorily deprived of her property or any interest therein except after prompt payment of fair and adequate compensation, prior to the taking of possession or acquisition of the property. The same provision gives the applicant a right of/ access to courts of law as long as she can demonstrate that she has an interest or right in the property.
- 5.3. In Reply to this, the Respondent contended that for the Jurisdiction of this Court to be invoked under **Article 50 of the Constitution of the Republic of Uganda, 1995 (as amended)**, the pleadings must show the claimed right which is fundamental to the Applicant as a human being, basic to a real living of a nature that applies to all people equally, that is enjoyed, no matter where one lives, what they do, and how they behave, or any other status, and facts that have developed sufficiently such that an infringement of that right has occurred or is likely to occur, rather than being contingent or remote.



5.4. The Respondent contended that Article 26 envisions a situation where the Applicant's ownership of title has been tampered with, however, the Applicant's ownership of title remains intact and undisturbed. He contended that the Applicant's right to the property has significantly reduced as a result of her actions in absconding from the Respondent as her husband.

5.5. **Article 26 of the Constitution of the Republic of Uganda 1995 as amended** provides for protection from deprivation of property stating that

(1) Every person has a right to own property either individually or in association with others.

(2) No person shall be compulsorily deprived of property or any interest in or right over property of any description except where the following conditions are satisfied-

(a) the taking of possession or acquisition is necessary for public use or in the interest of defense, public safety, public order, public morality or public health; and

(b) the compulsory taking of possession or acquisition of property is made under a law which makes provision for-

(i) Prompt payment of fair and adequate compensation, prior to the taking of possession or acquisition of the property; and

(ii) A right of access to a court of law by any person who has an interest or right over the property.



5.6. **Section 4 of the Human Rights (Enforcement) Act** provides for the Enforcement of rights and freedoms by the High Court stating that;

(1) The High Court shall hear and determine any application relating to the enforcement or violation of

a) non derogable rights and freedoms guaranteed in Article 44 of the Constitution;

b) other rights, duties, declarations and guarantees relating to fundamental and other human rights and freedoms envisaged in Article 45 of the Constitution

c)

d) Rights and freedoms which are preserved by this Act to be determined by a magistrate court, where the remedy sought by the applicant is beyond the pecuniary jurisdiction of that court.

(2) Applications under **subsection (1)** shall be in the form prescribed by regulations and may, unless the high court determines otherwise, be heard in open court.

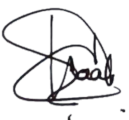
5.7. The Applicant's right to bring this application therefore arises from both **Article 26 Subsection 1 of the Constitution and Section 4 Subsection 1(d) of the Human Rights (Enforcement) Act 2019** wherein, the Applicant alleged that her right to own property individually or in association with others has been interfered with by the Respondent in the former and the pecuniary jurisdiction of the property in this matter brings it within the Jurisdiction of this Court. The court is further empowered under **Section 98 of the Civil Procedure Act, Cap. 71**, to make such orders as may be necessary



for the ends of Justice. The application is therefore, proper before this court.

6.0. Issue 2. Whether the suit properties comprised in Kibuga Block 12 Plot 493 and Kibuga Block 12 Plot 897 are held in Joint Tenancy by the Applicant and the Respondent?


- 6.1. **Section 56 of The Registration of Titles Act, Cap. 230** provides that where two or more persons are registered as joint proprietors of land, they shall be deemed to be entitled to the land as joint tenants, this is true where the four so-called unities of possession, interest, title, and time exist. In such cases, through the right of survivorship, the interest of a co-owner in a joint tenancy will pass equally to all of the other co-owners upon his or her death. If multiple co-owners remain, the joint tenancy remains in existence, while if only one owner survives, the entire interest in the property passes to the survivor.
- 6.2. At common law there is a presumption in favor of joint tenancy rather than a tenancy in common. It is presumed that a joint tenancy is created every time there is more than one owner of land (**See Morley v. Bird (1798) 3 Ves 628**). This presumption is rebutted in two circumstances: by lack of one or more of the four unities or by the use of words of severance in the conveyance such as “between” or “equally.” This would sever the unities and convert the joint tenancy into a tenancy in common.
- 6.3. The applicant has adduced evidence that she is a co-owner according to the certificate of titles in Block 12 Plot 493 land at Kibuga and land comprised in Block 12 Plot 897 situated at Kibuga, she is actually jointly registered on the title together with the Respondent.



- 6.4. According to Section 59 of the Registration of Titles Act, a certificate of Title issued under the Act should be received in all courts as evidence of the particulars set forth in the certificate and of the entry of the certificate in the Register Book, and is conclusive evidence that the person named in the certificate as the proprietor of or having any estate or interest in or power to appoint or dispose of the land described in the certificate is seized or possessed of that estate or interest or has that power.
- 6.5. The Respondent submitted at page 11 paragraph 4.35 and 4.36 and I quote, *“in the instant cause, the rights of the parties have not been ascertained for there to be severance and partition of land comprised in Kibuga Block 12 Plot 493 and Kibuga Block 12 Plot 897 situated at Kisenyi, Kampala District as the same is still registered in the names of the Applicant and Respondent as husband and wife”*.
- 6.6. In Paragraph 4.36; *“The second step is to consider whether there has been unlawful interference with that right or possess and then, thirdly, the nature of the interference. It is trite law that each of the co-owner enjoys the right to continue the joint tenancy, exercising his or her rights, which include an unrestricted right of access to the property, the right to enjoy the property on an equal basis along with the other co-owners, the right to share any income generated”*[underlined for emphasis].

The respondent therefore concedes to this fact. **I note.**

- 6.7. In this case the parties were registered as proprietors in the land comprising Kibuga Block 12 Plot 493 on 1st December, 2016, vide Instrument number KCCA00034330. The applicant fulfilled the four unities as they obtained possession, interest and title jointly and at the same time. The applicant is also joint owner of the suit property in



Kibuga Block 12 Plot 897 as they were jointly registered as its proprietors on 22nd May, 2014 vide Instrument number KCCA00007064. In both properties, four unities are fulfilled. This issue is therefore resolved in the affirmative.

7.0. Whether there are grounds that merit severance of the Joint Tenancy?

7.1. The Applicant prayed that court issues an order severing and partitioning the suit land to enable the applicant register her portion in her names and/or either of the property in her names. The Applicant relied on the decision of the court in **Zachary John Olum V Bongomin John Odora & 4 others (HCCA No. 120 of 2015) at page 13** to define **severance** to mean the mechanism for the transformation or termination of co-ownership. The court continued to state that whereas severance of a joint tenancy turns into a tenancy in common and can occur at law or in equity depending on the circumstances, severance of a tenancy in common terminates the co-ownership. Whereas with a joint tenancy severance does not put an end to co-ownership but means survivorship ceases to exist, severance of a tenancy in common terminates the co-ownership. Destruction of one or more of the unities will cause severance of a joint tenancy at law or in equity as the unit of possession is essential to a joint tenancy and a tenancy in common destruction of this unity will put an end to co-ownership.

7.2. The Applicant further relied on the case of **Mukuba Charles Vs. Julius Kiyimba Lubega, Misc. Cause No. 107 of 2022**, decided by **Hon. Justice Bernard Namanya** who held that, the Registration of Titles Act does not provide for ways through which a joint tenancy can be




served and this paves way for the application of common law principles and doctrines of equity in severance of the joint tenancy. In the same case the court set out three ways in which a joint tenancy can be severed, which are; 1) by an act by any one of the joint tenants can sever his or her interest from the joint tenancy, 2) by mutual agreement and 3) the course of dealing between the joint tenants may lead to the inevitable conclusion that the interests of the joint tenants is severed.

- 7.3. The parties in this application each enjoys the right to property, exercising his or her rights, which include unrestricted right of access to the property, the right to enjoy the property on an equal basis along with the co-owner and the right to share any income generated by the common property, continue the tenancy in common,
- 7.4. Counsel for the Applicant submitted that, the course of dealing between the applicant and the respondent as joint tenants in respect of the suit properties has clearly led to the inevitable conclusion that the interests of joint tenant's should be severed.
- 7.5. On his part, the Respondent opposed the severance and partition of the suit property stating that one owner cannot partition the property without the consent of the other co-owner. He contended that it is not proper to divide the property in contention between the parties when their marriage has not been dissolved for reasons that the Applicant will get her share in the property when the Divorce is finalized.
- 7.6. I have come to observe that the Applicant prayed that court sever or partition the suit property to allow their interests to be separated since the parties can no longer jointly own the properties.



- 7.7. The suit properties are not only the land comprised at Kibuga Block 12 Plot 493 and Kibuga Block 12 Plot 897, but also the commercial buildings built thereon. It would therefore be difficult to sever the title in the land and not the commercial buildings holding rental properties. Unlike with condominium property, the rental units on the commercial property do not have titles limited to each unit but rather the entire property is held in one Individual Title for each of the suit properties.
- 7.8. With the disputes between co-owners, it is possible for an application to be made for partition of the land or for the co-owners to be permitted to occupy different parts of it. Such an application may be made either outright or by way of counterclaim to application for an order for sale. **Meggary's Manual of the Law of Real Property, Eighth Edition at page 327.**
- 7.9. The parties have only proved to this court, that though their petition for Divorce was set aside, they cannot neither live together but they also cannot peacefully co-own the suit property. Therefore based on the grounds that;
- a) It has been established that parties are the joint registered proprietors of the suit land as joint tenants.
 - b) The respondent has made it impossible for joint usage of the suit land by effectively evicting the Applicant from the suit property. The Applicant has failed to harmoniously jointly hold the property.
 - c) There is need to separate the interests held by the applicant and the respondent as joint tenants so that each can hold a separate portion of the suit land, and




d) The circumstances under which the land has been developed by the parties makes severance of the titles difficult.

7.10. Issue 3 is therefore resolved in the affirmative as the court is satisfied that there are sufficient grounds for Partition of the suit property.

8.0. What Remedies are available to the Parties?

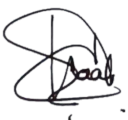
Partition

- 8.1. **The Black's Law Dictionary at page 3542** defines Partitioning as the division of real property held jointly or in common by two or more persons into individually owned interests. The Respondent and the Applicant jointly purchased the suit property in Kibuga Block 12 Plot 493 in 2009 using funds from a joint account in Centenary Bank. The parties obtained a loan from Centenary Bank of 120,000,000/= UGX One Hundred Twenty Million Shillings as evidenced by Annexure "E" on the applicant's affidavit in support of the Application which is the Banking Facility Agreement obtained from Centenary Bank to finance the construction of the ground floor.
- 8.2. The applicant then obtained another loan from Hidestin Logistics Limited of 496,000,000/= (Four Hundred Ninety Six Million Uganda Shillings) that she used to construct the remaining two floors of the building. The loan facility from Centenary Bank clearly states that the money was to be used to construct the ground floor.
- 8.3. The Applicant and the Respondent purchased Kibuga Block 12 Plot 987 in 2013. However, any loans and other risks taken to further develop the property beyond the initial 120,000,000/= UGX from Centenary Bank were obtained by the Applicant. It is clear that the



loans obtained to further the construction and development of this property were high risks undertaken by the parties. It is well known that the level of reward associated with an investment is typically proportional to the level of risk.

- 8.4. I have reviewed the bank statement attached as annexure 'D' to the Applicants affidavit in support of the Application. The same is attached as annexure 'E' to the Respondent's affidavit in reply. The bank statement runs from 1st January 2017 to 1st January 2019. Following my review, I have observed nearly all the credits thereon are by the Applicant and one Mugisha Sulaiman. The Respondent has not led any evidence to show the deposits he made on the said joint account. I am therefore inclined to believe that the savings on the joint account were proceeds accumulated by the Applicant.
- 8.5. Therefore, it is only in good conscience, applied together with this law of Investment that he/she who undertook the greater risk in this endeavor should benefit from the reward obtained upon the success of the said risk. The loan obtained from Hidestein Logistics to construct the remaining two floors of the commercial building were a risk undertaken by the Applicant and not the Respondent, with whom only the initial Centenary bank loan for the ground floor was shared. By the calculation of risk, the applicant and respondent would have an equal stake in the reward that was the construction of the ground floor of the commercial building, however the risk undertaken for the construction of the remaining two floors was solely that of the Applicant. The Applicant and the Respondent jointly purchased the land comprising the second property at Kibuga Block 12 Plot 897 Kisenyi. However, there appears to be an evidential gap in the source



of the funds used to develop the second suit property and pay off the squatter.

- 8.6. The applicant contended that the loan from Finance Trust Bank was used to construct the second property, however, according to the letter from Finance Trust Bank, the loan facility was obtained to develop another property comprised in Kibuga Block 12 Plot 1368 Kisenyi that is not any of the above mentioned suit properties.
- 8.7. The Respondent on his part did not avail court with proof of any other source of the money that he used to not only construct the other two floors of the storied building, and any contributions in money or risks undertaken to further develop the properties or pay off the squatter on the 2nd suit property and construct the rental units (shops) thereon.
- 8.8. In light of the individual contributions by the Parties, the loan facility obtained by the Applicant to develop the suit property, the security put up by the Applicant, and in the interests of Justice and Equity, the court Partitions the suit property as follows;

8.8.1. The Storied Commercial Building comprised in Kibuga Block 12 Plot 493 Kisenyi.

1. The Applicant shall hold ownership of the three (3) storied commercial building together with 2 kiosks on the side of the building including all the temporary structures premised on this suit land.

8.8.2. The Commercial Building comprised in Kibuga Block 12 Plot 897 Kisenyi.

1. The Respondent shall hold ownership of the commercial building and he is free to continue with its construction.



2. All kiosks and temporary structures on the suit land shall be owned and rent collected by the Respondent.

- 8.9 In this regard, the Respondents contribution in the construction and development of the ground floor and purchase of the land at Kibuga Block 12 Plot 493 shall be compensated by his sole ownership of Kibuga Block 12 Plot 897 where the Applicant also contributed to purchase, construction and development. The Applicant's contribution and share in the second suit property awarded to the Respondent shall be compensated by his share and contribution in the property awarded to her.
- 9.0. The parties have demonstrated a complete failure to work together in civility and therefore a complete separation of interests is not only just and fair but also necessary. The parties shall immediately vacate any of the properties not awarded to them as individuals in this Application and failure to do so will amount to Contempt of court.
- 9.1. In reaching this decision I have in mind the size of each said plot that is Plot 897 being approximately 0.07 hectares and Plot 493 measuring approximately 0.12 hectares.
- 9.2. The respondent deponed that the property situated at Land at Kibuga Block 12 Plot 493 comprises of a matrimonial home/house which is still accommodating children and the entire family. During the locus visit on 18th August, 2023 it was observed that there was no matrimonial home on the entire 3 floor of the commercial property, instead the 3rd floor had a church, units rented as offices and individual rentals as homes. I am mindful of the definition of Matrimonial Property as defined in the case of **Charman v. Charman (No 4) [2007] EWCA Civil 503; [2007] 1 FLR 1246** to mean "*property*



of the parties generated during the marriage otherwise than by external donation”.

- 9.3. The second floor, as alleged by the respondent is not occupied by the 2 children of the parties aged 29 and 23 years respectively and besides adult children cannot take priority over a registered proprietor.
- 9.4. To enable the applicant and the respondent to procure a certificate of title for the portion of the suit land, I issue an order directing the Commissioner for Land Registration to register the suit land in each individual as herein above.
- 9.5. Before I take leave I took note of counsel for the respondent’s written submission being the exact replica of the decision in the case of **Zachary John Olum Versus Bongomin John Odora & 4 others HCCA No. 120 of 2015** by His Lordship Stephen Mubiru. I believe his could have been better presented without that kind of plagiarism.

10.0. **Conclusion.**

10.1. In the final result, the court decides as follows.

1. The suit land and commercial building thereon comprised in Kibuga Block 12 Plot 493 Land at Mengo Kisenyi shall belong to the Applicant.
2. The suit land and commercial building thereon comprised in Kibuga Block 12 Plot 897 Kisenyi land at Mengo shall belong to the respondent.
3. The Applicant shall hold ownership of the 2 kiosks on the side of the building including all other temporary structures on the suit land comprised in Block 12 Plot 493 Land at Mengo.



4. The Respondent shall have ownership of all the kiosks and temporary structures situated at Block 12 Plot 897 land at Mengo Kisenyi and shall collect the rent.
5. The Commissioner Land Registration is hereby directed to register Ms. Tumukwasibwe Evas as the registered proprietor on the Certificate of Title for land comprised in Kibuga Block 12 Plot 493 land at Mengo.
6. The Commissioner Land Registration is hereby directed to register Mr. Tumukwasibwe Broad as the registered proprietor on the Certificate of Title for land comprised in Kibuga Block 12 Plot 897 land at Mengo.
7. A permanent injunction is issued against the Respondent restraining him or his agents or assignees from interfering with the applicant's proprietary rights in the suit land and property as granted by this court.
8. Each Party shall bear its own costs.

Dated, signed and delivered by email this 1st day of November, 2023.



**CELIA NAGAWA
JUDGE**