

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

**MISC. CAUSE NO. 034 OF 2014
IN THE MATTER OF HUSSAM DIN NYANZI (MINOR)**

AND IN THE MATTER OF AN APPLICATION BY NYANZI YASIN (APPLICANT)

RULING

BEFORE HONOURABLE LADY JUSTICE EVA K. LUSWATA

This application was brought *ex parte* by an amended notice of motion by which the applicant seeks the following orders:-

1. A declaration that the suit land is family property to which all issues of the application and the applicant are entitled to share equally.
2. An order that the names of all the children or issues of the applicant and the applicant are entered onto the register as tenants in common in equal shares of 1/7.
3. An order directing the Commissioner, Land Registration to cancel the names of Hussam Din Nyanzi and Nyanzi Yasin made in respect of Kyadondo Block 223 Plot 3196 vide KLA 284185, Kyadondo Block 223 Plot 3195 vide instrument No. KLA 284185 and Kyadondo Block 223 Plot 3197 vide Instrument No. KLA 284185 (hereinafter called the suit land) and substitute the said entries with the names of Hussam Din Nyanzi 1/7, Bushirah Namukwaya 1/7, Raniah Namawejje 1/7, Samia Nyanzi 1/7, Hairah Bukirwa 1/7 Aisha Namuleme 1/7 and Nyanzi Yasin 1/7 onto the register book as tenants in common in equal shares.

The application is supported by the affidavit of Nyanzi Yasin the applicant and submissions were presented in writing. In his affidavit, the applicant affirms that he is the natural father of the six minors and is charged with the duty to provide for them equitably. That he acquired the suit land with the intention of creating a family property and investment and because by then, he had only Hussam Din Nyanzi (hereinafter called the child) as his one issue, the land was registered in both their names. He further affirmed that the suit land constituted his life savings and if it were to be left in his and the names of that one child only, it would create a sense of preference. Also that

he professed the Muslim faith and upon his death, the child being a Muslim male, stands in even higher advantage as on top of his 50% share in the suit land, he would be entitled to twice the share of his female siblings, thereby perpetuating inequality between his off-spring on the ground of sex.

In addition, counsel for the applicant quoted Article 33(A) of the Constitution that guarantees women equal treatment in all aspects with men, including economic opportunities. That in the application, it is sought for the entire applicant's children to share an equal economic platform, with respect to the investments on the land. She relied on Article 139(1) of the Constitution and S.33 Judicature Act to invoke the unlimited jurisdiction of this court to grant the orders sought.

Under Art 139(1) of the Constitution, this court is clothed with unlimited original jurisdiction in all matters and under S.33 Judicature Act, this court shall in exercise of that jurisdiction, grant on such terms as it deems fit all such remedies sought by parties to a matter in respect of any legal or equitable claim properly brought before it. Therefore, the issue to be resolved would be that;

Is this claim properly brought before this court and would the applicant be entitled to the prayers sought?

The applicant seeks this court to declare the suit land family property to which him and his six children can share equally. According to S.38A of the Land Amendment Act 2004, family land should be land on which the ordinary residence of a family is situated and from which they derive sustenance. That if in doubt, it is taken to be land which the family freely and voluntarily agrees to be family land or which according to the norms, culture, customs, traditions or religion of that particular family is to be regarded as family land.

The applicant has presented three certified copies of duplicate certificates of title of the suit land which indicate that he and the child are joint tenants, obviously in equal shares. This under S.59 of the RTA would be sufficient proof of their proprietorship. The applicant has explained that the suit land is being developed with 10 housing units and the photographs provided depict that stage of development. The applicant further explained that this is his greatest investment so far, and it was his intention that it would provide the family's livelihood. However, that alone would not in my estimation mean that it is family property for which his other children are entitled,

especially when it is not shown that it is the property in which his family ordinarily resides or from which they currently derive their sustenance.

The above notwithstanding, the applicant has shown that it is him who acquired the property, before his divorce from his former spouse. I am inclined to believe him, since it has been stated and uncontroverted in the application that the child is currently aged 14 years and therefore a minor at the time the suit land was acquired. He therefore could not have reasonably contributed towards its acquisition. That notwithstanding, the child did obtain and still retains a legal interest in the suit land to which he can be deprived only in certain restricted circumstances. Therefore, I am reluctant and decline to make a declaration that the suit land is family property to which all the applicants' issue are entitled to an equal share. Instead, I would raise an issue as to whether the suit land is property in which the applicant can be allowed to deal in, with a purpose of giving an interest to all his six issue in equal shares?

The applicant relied on six birth certificates in which he is named as the biological father of the child and his five female siblings. The children were born to him and three different mothers, i.e. Sophia, Nyanzi, Mariam Nyanzi and Madinah Nyanzi Mirisho between 10/12/99 and 31/8/12. In particular according to an original short birth certificate issued on 3/9/14, the child was born to the applicant and Madina Murisho at Mulago Hospital on 10/12/99. According to S. 71(1) of the Children Act, entry of the name of a person in a birth certificate as the mother or father of the child, a certified copy of that entry shall be prima facie evidence that the person named as the father is the father of the child.

I am therefore convinced that the applicant is the biological father of the child and other five children that are the issue in this application. I have also already found that the applicant and the child are the registered proprietors of the suit land in equal shares.

Going by the facts as presented, any order of this court would entail that the applicant is authorized to deal in land that is partially registered in the names of his minor son. Currently, there appears to be no specific law under which such an applicant can proceed to move the court. I am aware of a long practice and do take judicial notice that such applications have routinely been brought on a motion to seek a guardianship order. This may be because such a procedure

was at one time mentioned in the Judicature Act. However, it was omitted in the amendment of that Act but applicants have continued to approach the High Court using that procedure [see for example in the matter of David Mark Kabwigu Kurinda and In The Matter of An Application for Guardianship Order by Daniel Kirunda Misango F/C 120/2009.

In the absence of a specific procedure, the applicant was thus correct in resorting to the open provisions of the Constitution and the Judicature Act for the appropriate remedies.

However, as I resolve this matter, I am bound and shall remain bound by the provisions of the Children Act (hereinafter called the Act). According to S.3 of the Act, the welfare principles and the children's rights set out in the 1st schedule give the guiding principles in making any decision that will affect a child. Specifically, under Principle 1 of P3(1) (b) "*whenever the Court or any person determines any question with respect to the administration of a child's property, or the application of any income arising from it, the child's welfare shall be of paramount consideration.*

Further, in accordance with principle 3(b), (c), (d) and (e) in (in making any such decision) I am bound to consider the likely effect of my decision on the child's physical, emotional and educational needs, the likely changes in his circumstances, all in accordance with his age, sex; background and the applicant's ability in meeting his needs *vis a avis* that of his siblings.

The applicant has gone to great length to explain why he wishes his other minor female children to have an equal share in the land. He stated that at the time he acquired it, he meant it to be for the sole purpose of creating a family investment, to benefit him, his wife and children collectively. His ex wife cannot for obvious reasons continue to derive benefit from it, but this would not apply to all his other children.

According to section 5 of the Act, it is the duty of every parent to maintain their child. This would entail the parent making equitable arrangement for all their children legitimate and illegitimate irrespective of their sex. I agree with counsel for the applicant that under Article 33(4) of the Constitution, women (and the girl child) are entitled to equal opportunities with men (and the boy child) in all political, economic and social activities. The applicant has a

share in this viable property which he wishes all his children to equally share. It would be a reasonable arrangement and meet the equality paradigm that are strongly entrenched in our Constitution.

This particular child's physical, emotional and educational needs are paramount but must be weighed against similar needs of his siblings. I see no likely adverse effects against him, if he were to relinquish part of his share to his siblings as the applicant has not shown anywhere that he will discontinue any parental support to him after a decision is made in the suit land. Further, the applicant has shown that he expended much of his savings and efforts in developing the suit land and it is his desire that he benefits from it in equity with all his children. This, in my view, is a fair arrangement that will address the welfare of all six children collectively.

I am therefore persuaded that an order to de-register the applicant and the child from the suit land and in their place, a registration of the applicant, the child and the latter's five female siblings is justifiable and in their welfare. I therefore allow the second prayer of the motion.

In addition I issue a consequential order against the Commissioner Land Registration directing the Commissioner, Land Registration to cancel the names of Hussam Din Nyanzi and Nyanzi Yasin made in respect of Kyadondo Block 223 Plot 3196 vide KLA 284185, Kyadondo Block 223 Plot 3195 vide instrument No. KLA 284185 and Kyadondo Block 223 Plot 3197 vide Instrument No. KLA 284185 and substitute the said entries with the names of Hussam Din Nyanzi 1/7, Bushirah Namukwaya 1/7, Raniah Namawejeje 1/7, Samia Nanyanzi 1/7, Hairah Bukirwa 1/7 Aisha Namuleme 1/7 and Nyanzi Yasin 1/7 onto the register book as tenants in common in equal shares.

I further order that the applicant meets the costs of this application.

I so order.

EVA K. LUSWATA
JUDGE
15/8/14