

**THE REPUBLIC OF UGANDA,
IN THE HIGH COURT OF UGANDA AT FORT PORTAL
MISCELLANEOUS APPLICATION NO. 112 OF 2022
(ARISING FROM CIVIL SUIT NO. 035 OF 2022)**

NIGHTINGALE RUKUBA-NGAIZA (Administrator of the Estate of the late Zabuloni Kikukule and Ezekiel Rukuba) ::::::::::::::: APPLICANT

VERSUS

**1. SAM RUKUBA KAHANGWE alias SAMWIRI RUKUBA
(Administrator of the Estate of the late Nikodemu Kakurora**

2. ROSSALINE ISSAGARE :::::::::::::::

RESPONDENTS

BEFORE HON. MR. JUSTICE VINCENT EMMY MUGABO

RULING

This is an application for judgment on admission made by way of notice of motion under the provisions of sections 33 of the Judicature Act, 98 of The Civil Procedure Act, Order 13 rule 6 and Order 52 rules 1, 2 & 3 of The Civil Procedure Rules seeking for orders that;

1. An order that judgment be entered in favour of the applicant on admission by the respondents of the applicant's claim and reliefs therein for;
 - a. A declaration that the 4 acres of land comprised in Burahya Block 102 Plots 8, 13 and 17 at Maguru belongs to the estate of the late Zabuloni Kikukule.
 - b. An order directing the Commissioner Land Registration to issue a special certificate of title in respect of the land comprised in Burahya Block 102 Plots 8, 13 and 17 at Maguru

- c. An order directing the 1st respondent to forthwith allow the applicant's surveyors to enter upon the suit land comprised in Burahya Block 102 Plots 8, 13 and 17 at Maguru to survey and demarcate the applicant's entitlement of 4 acres as administrator of the late Zabuloni Kikukule
 - d. An order directing the 1st respondent to forthwith take all necessary steps to transfer the 4 acres from Burahya Block 102 Plots 8, 13 and 17 at Maguru to the applicant as administrator of the late Zabuloni Kikukule including signing mutation forms, transfer deeds and application for registration
 - e. An order for the eviction of the respondents from the said 4 acres of the land
 - f. An order for inspection of Burahya Block 102 Plots 8, 13 and 17 at Maguru to ascertain the extent of the encroachment.
 - g. An order for payment of general damages
 - h. An order for payment of punitive damages
 - i. An order for payment of interest at 25% p.a on all monetary awards above
 - j. An order that the 1st respondent pays the costs of the suit 3
2. Costs of the application be paid by the respondents

Background

The applicant is the administrator of the estate of the late Zabuloni Kikukule and Ezekiel Rukuba. She filed Civil Suit No. 035 of 2022 against the respondents claiming among others that 4 acres of land being part of the land comprised in Burahya Block 102 Plots 8, 13 and 17 at Maguru belongs to the estate of the late Zabuloni Kikukule. She also claimed for 2 acres of land being part of the above mentioned land to belong to the

estate of the late Ezekiel Rukuba. She prayed for several other orders aimed at transferring the said acreages of land into her name and claimed that the 1st respondent failed to perform his obligation to effect the required transfer of the said acreages of land.

In their written statement of defence, the 1st respondent admitted to the fact that the applicant is entitled to the 4 acres of land and that he has been doing all in his power to transfer the same to the applicant in accordance with an agreement he executed with the applicant in the same regard but has been prevented by circumstances beyond his control including numerous caveats lodged against dealings in the land by the applicant and several other beneficiaries.

The applicant now seeks for judgment on admission in respect to the admission on the 4 acres of land.

The application was supported by the affidavit of Nightingale Rukuba Ngaiza that laid down the grounds of the application. They are as follows;

- a) The applicant filed Civil Suit No. 035 of 2022 against the respondents claiming among others that 4 acres of land being part of the land comprised in Burahya Block 102 Plots 8, 13 and 17 at Maguru belongs to the estate of the late Zabuloni Kikukule
- b) The respondents in their written statement of defence explicitly admitted the applicant's claim of entitlement to said 4 acres and given this unequivocal.

The 1st respondent deponed an affidavit in reply stating that;

- a. It is true that the applicant is entitled to 4 acres of the land comprised in Burahya Block 102 Plots 8, 13 and 17 at Maguru but

it would not be necessary for the court to grant the relief sought by the applicant in this application since the 4 acres is already occupied and utilised by the beneficiaries of the estate of the late Zabuloni Kikukule

- b. The applicant is not entitled to the damages and interest prayed for as the land is heavily encumbered by various persons which has made it impossible for the 1st respondent to subdivide the land and perform his obligations to the applicant.
- c. The 1st respondent executed mutation forms and transfer forms for the land claimed by the plaintiff and has done all that is required of him save for the provision of the special certificate of title and by praying for the same in this application, the applicant is abusing the process of court.
- d. He has been at all times committed to the agreement between him and the applicant to have the land transferred to the applicant but was frustrated by the numerous caveats lodged on the land but that the applicant is already in occupation and utilisation of the 4 acres of the land.

Representation and hearing;

The Applicant was represented by KBW Advocates and the respondents by KGN Advocates. The hearing proceeded by way of written submissions filed by both counsel and the same have been considered herein.

Court's consideration

The only issue for this court's consideration is whether there are grounds that warrant the issue of a judgment on admission.

The applicant's counsel submitted that **Order 13 rule 6 of the Civil Procedure Rules** provides that any party may at any stage of a suit where an admission of such has been made either on the pleadings or otherwise, apply to the court for such judgment or order as upon the admission he/she may be entitled to without waiting for the determination of any other question between the parties and court may upon the application make such order, or give such judgment as the court may think just. He further cited the cases of ***Connie Kekiyonza Watuwa & Others Vs Attorney General HCMA No. 544 of 2022, Kibalama v. Alfasan Belgie CVBA [2004]2 EA 146 (CAU) at page 153***, where it was held that "admissions have to be plain and obvious, as plain as a pikestaff and clearly readable because they must result in judgment being entered. They must be obvious on the face of them without requiring a magnifying glass to ascertain their meaning".

Counsel for the applicant argues that the 1st respondent in paragraph 5 of the written statement of defence plainly admits that the applicant is entitled to 4 acres of the land comprised in Burahya Block 102 Plots 8, 13 and 17 at Maguru. It is only proper that judgment is entered on the 4 acres admitted and the suit proceeds to proof of the applicant's other claims.

Counsel for the respondents cited various court decisions including ***Kibalama (supra)*** that re-emphasises the fact that for court to enter a judgment on admission, the admission have to be plain, obvious and clearly readable because it must result into judgment. They must be obvious on the face of them. Counsel argued that mere entering into an agreement with the applicant cannot by itself lead court into entering judgment without further investigation.

The applicant is suing as the administrator of the estate of the late Zabuloni Kikukule. **Order 13 rule 6 of the Civil Procedure Rules** provides for Judgment on admissions as follows;

‘Any party may at any stage of a suit, where an admission of facts has been made, either on the pleadings or otherwise, apply to the court for such judgment or order as upon the admission he or she may be entitled to, without waiting for the determination of any other question between the parties; and the court may upon the application make such order, or give such judgment, as the court may think just.’

Where an admission of facts has been made, either on the pleadings or otherwise, a party to such a suit may apply to the court for judgment or order as he/she may be entitled to upon that admission, without waiting for the determination of any other question between the parties; and the court may grant such judgment or order, as it may think just. The admission may be contained in the pleadings or in any other matter brought before the court such as a formal admission as provided for in **Order 13 rule 4 of the Civil Procedure Rules**.

It is a settled principle of the law that a judgment on admission is not a matter of right but rather one of exercise of discretion of the Court. The admission should be unambiguous, clear, unequivocal and positive. Where the alleged admission is not clear and specific, it may not be appropriate to take recourse under the provision. See: ***Future Stars Investment (U) Ltd Vs Nasuru Yusuf, HCCS No. 0012*** of 2017. The judge’s discretion to grant judgment on admission of fact under the law is to be exercised only in plain cases where the admissions of fact are so clear and unequivocal that they amount to an admission of liability

entitling the plaintiff to judgment. See: **Cassam Vs Sachania [1982] KLR 191.**

I have carefully studied the parties' pleadings and submission. Particularly the respondents' response to this application makes it clear that the 1st respondent does not dispute the applicant's entitlement to 4 acres of land which is part of the bigger chunk of land comprised in Burahya Block 102 Plots 8, 13 and 17 at Maguru. He only states that he has encountered several challenges that have barred him from transferring the 4 acres to the applicant. These challenges include the numerous caveats lodged against the land by the applicant and several other beneficiaries that have made it impossible for him to effectively deal with the land. Secondly, the unavailability of the certificate of title of the land has been one other challenge.

In my opinion, the respondents' admission is unequivocal with respect to the 4 acres of land. This court is satisfied with the evidence on record and circumstances surrounding the case that this is a proper case to exercise its discretion to enter judgment on admission. The court in consideration of the law and both counsels' submission finds that the applicant is entitled to claim a judgment for the 4 acres of land, which is part of the land comprised in Burahya Block 102 Plots 8, 13 and 17 at Maguru as belonging to the estate of the late Zabuloni Kikukule.

Obiter: I note that there are several suits filed in this court with respect to the same estate. These include Misc. Cause No. 02 of 2022, Civil Suit No. 50 of 2022, and Civil Suit No. 35 of 2022 from which the present application arises. I am calling for all these files and allocating them to myself for convenience of trial and ease of management. Should the

parties desire to consolidate them or any set of them, they can apply to have the same consolidated

This application succeeds. Judgment is entered on admission in favour of the applicant with the following orders and declarations;

- a. It is declared that the 4 acres of land comprised in Burahya Block 102 Plots 8, 13 and 17 at Maguru belongs to the estate of the late Zabuloni Kikukule.
- b. The Commissioner Land Registration is directed to issue a special certificate of title in respect of the land comprised in Burahya Block 102 Plots 8, 13 and 17 at Maguru upon fulfilment of the conditions for issuance of such title by the applicant.
- c. The 1st respondent is directed to allow the applicant's surveyors to enter upon the land comprised in Burahya Block 102 Plots 8, 13 and 17 at Maguru to survey and demarcate the applicant's entitlement of 4 acres as administrator of the late Zabuloni Kikukule.
- d. The 1st respondent is directed to take all necessary steps on his part to transfer the 4 acres from Burahya Block 102 Plots 8, 13 and 17 at Maguru to the applicant as administrator of the late Zabuloni Kikukule.
- e. The respondents are directed to give vacant possession of the 4 acres to the applicant and beneficiaries of the estate of the late Zabuloni Kikukule after the survey in c. above.
- f. All other remedies prayed for by the applicant in this application shall be determined in Civil Suit No. 035 of 2022.
- g. Costs of this application shall abide by the outcome of Civil Suit No. 035 of 2022.

It is so ordered

Dated at Fort Portal this 31st May 2023.



Vincent Emmy Mugabo

Judge

The Assistant Registrar will deliver the ruling to the parties



Vincent Emmy Mugabo

Judge

31st May 2023