

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(LAND DIVISION)

MISCELLANEOUS APPLICATION NO.2919 OF 2023

5 ***(Arising out of Civil Suit No.0079 of 2007)***

1. FRED MUGWANYA

2. DAVID SENTONGO MUKASA

10 **3. ROBINAH LUBEGA (*Administrators of*
the Estate of the late Eriazali Kiiza Mukasa
Kibalama)::.....APPLICANTS**

VERSUS

1. JAMES JOEL SEMBAYITA

2. DANIEL BANJA:.....RESPONDENTS

15 **Before: Lady Justice Alexandra Nkonge Rugadya.**

Ruling.

This application was filed by the administrators of the estate of the late Eriazali Kiiza Kibalama, under the provisions of **Section 33 of the Judicature Act cap.13, Section 98 of the Civil Procedure Act, Cap.71, and Order 50 rule1, 3, 4, 5 & 6, and Order 52 rules 1 & 2 of the Civil Procedure Rules SI 71-1** seeking orders that:

25 **a. The court doth issue consequential orders to enforce the operation of a consent judgment/decree, issued vide High Court Civil Suit 0079 of 2007 by way of ratifying the land surveyor's report dated 4th July, 2022 prepared by m/s Grid Surveys & Associates Ltd regarding the deceased's original kibanja on land comprised in Busiro Block 364 plot 334 (plots 1195, 1196, 1197,**



& 1198), plots 393, 425, & 257, land at Bulenga 'A' Wakiso District.

5 **b. That an order doth issue directing the Commissioner Land Registration to issue a certificate of title for the surveyed portion of the deceased's kibanja/land measuring approximately 2.30 acres (0.930 hectares) into the applicants' names as administrators of the estate of the late Eriazali Kiiza Mukasa Kibalama which was decreed to belong to the late Eriazali Kiiza**
10 **Mukasa Kibalama vide consent judgment/decreed in High Court Civil Suit 0079 of 2007 issued on 9th February 2018.**

c. Costs be provided for.

Grounds of the application.

15 The grounds upon which this application is premised upon are contained in the affidavit in support thereof deponed by Mr. Fred Mugwanya, the 1st applicant herein but briefly, that on 9th February 2018, the parties to **Civil Suit No.0079 of 2007** entered a consent judgement before this court.

That in compliance with the said consent, the applicants' lawyers on 21st June
20 2022 instructed **m/s Grid Survey & Associates Ltd** to proceed and open boundaries so as to establish the original acreage of the late Eriazali Kiiza Mukasa Kibalama's *kibanja*.

That on 1st July 2022, in the presence of the applicants, Local council, and police the boundary open exercise was conducted on land comprised in **Block**
25 **364 plot 334 land at Bulenga** and that the report prepared thereafter revealed that the original *kibanja* belonging to the estate of the late Eriazali Kiiza Mukasa measured approximately 2.30 acres on **plot 334** which according to the aforementioned consent was to be curved off for the estate to obtain a certificate of title thereto.

30 That it is important and equitable that this court ratifies and adopts the said land surveyor's report dated 4th July, 2022 to enable court give the



Commissioner Land Registration to issue the certificate of title in respect of the land established as forming part of the late Eriazari Kiiza Mukasa Kibalama, and to operationalize the orders of this court.

5 That the respondents shall not be prejudiced in any way as they are according to the terms of the consent entitled to retain the certificates of title for the land they acquired, thus it is just and equitable that this application is allowed.

Reply in Objection:

10 The affidavit in reply was filed by the 1st respondent and supported by the affidavit of the 2nd respondent, Daniel Banja.

The gist of their objection is that there are matters concerning the estate which were transferred and still pending before the Family division; and that this application is therefore misconceived, as the applicants did not come to court with clean hands.

15 **Representation:**

The applicant is represented by ***M/s Shonubi Musoke & Co. Advocates*** while the respondents are represented by ***M/s Obed & Associated Advocates*** and ***M/s Sanywa & Co. Advocates***.

Consideration of the issue:

20 I have carefully looked at the pleadings and submissions by either side and I have noted that indeed a consent agreement was endorsed by this court under ***Civil Suit No. 0079 of 2007***, which the respondents however seek to challenge vide ***MA No. 1158 of 2023***, on the ground that it was not signed by some of the family members. The decision is pending determination in
25 which was due for hearing on 15th November 2023 before the family division.

I have noted that after the consent was signed other developments have since taken place took place. The applicants obtained letters of administration over the estate of the late Kiiza Mukasa Kibalama and sold part of the estate to John Kalembe, as per the sale agreement dated 28th April, 2022.



A kibanja measuring 50 decimals was later disposed of as per memorandum of sale dated 13th January, 2023. It is also noted that **Civil Suit No. 326 of 2022** was filed in the family division by the respondents by which they seek to challenge the letters of administration granted to the applicants. One of the grounds raised was that this court had recognised the existence of the will of the deceased. However the application for letters of administration which they seek to challenge had no will attached.

The survey which the applicant seek to ratify in this application was conducted on 4th July, 2022 by *M/s Grid Surveys & Associates Ltd* in respect to the deceased's original *kibanja* on land comprised in **Busiro Block 364 plot 334 (plots 1195, 1196, 1197, & 1198), plots 393, 425, & 257**, at Bulenga 'A' Wakiso District.

It was the respondents' claim that the survey was conducted in their absence, a claim which the applicants however deny.

This court noted that the survey was as a matter of fact conducted after the execution of the sale agreement dated 28th April, 2022 between them and the purchaser, John Kalemba.

According to the respondents, Kalemba illegally purchased the land as he is not a member of the family; and this was in contravention of the order issued by this court. But even more importantly, this court on 30th March, 2022 issued an order by which all the matters pending before it had been transferred to the Family Division, since they rotated around the distribution of the estate of the late Kibalama.

By that order the grant of letters of administration was to be issued to persons named in the will and the consent endorsed by this court was to remain in abeyance; and all outstanding issues raised concerning the consent were to be resolved by the family division.

The respondents in this application referred to a correspondence dated 9th March, 2023 addressed to the Head of Family Division, requesting him to summon all the parties to find a way to expedite the hearing of these matters.



This indicates that there were a number of other applications pending before another division relating to the same matters as presented though not directly in this application.

The applications as listed in that correspondence were **MA No. 720 of 2022**
5 **arising out of MA No. 719 of 2022 itself arising out of Civil Suit No. 0079**
of 2007; MA No. 629/2022 arising out of Civil Suit No. 206 of 2022.

I could not agree more therefore that the matters are properly before another division and by filing this application in this division there is a likely danger that conflicting orders may be issued.

10 This application is therefore misconceived and is an abuse of court process.
It is therefore dismissed, with costs to the respondents.



Alexandra Nkonge Rugadya

15 **Judge**

19th February, 2024

Delivered by email
Alex
19/2/2024.