

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT JINJA**

**MISCELLENOUS APPLICATION NO. 427 OF 2014
ARISING FROM CIVIL SUIT NO.06 OF 2014 (SHARIA COURT OF LAW AT
IGANGA)**

- 1. KINAWA JAMILA**
- 2. KAUMA BABITA:::::APPLICANTS/JUDGMENT CREDITORS**

VERSUS

ASUMAN BAKALI :::::::::::RESPONDENT/JUDGMENT DEBTOR

RULING

BEFORE: HON. LADY JUSTICE EVA K. LUSWATA

Back ground and brief facts

Kinawa Jamila and Kauma Babita were the plaintiffs in HCCS No.132 of 2013 and Asuman Bakali the defendant. At the instance of Bakali, the matter was on 8/9/14 referred to the Khadi's Sharia Court at Iganga vide Civil Suit No 06/2014 in which he was the plaintiff. Judgment was to some specified extent entered in favour of Kinawa Jamila on 7/11/14 with a recommendation that she seeks the assistance of the High Court in Jinja to gain possession of some properties and a land title.

The applicants therefore proceeded by a notice of motion *ex parte* seeking execution of the Sharia Court judgment, vacant possession of land and release of the certificate of title of land comprised in Plot 9 Nakigo Road and land at Buligo South LC1 Iganga Municipality.

The applicant is represented by Mr. Ngobi Balidawa whose attempts to proceed *ex parte* were declined and he was directed to serve the respondent with the motion. The respondent was served several times but failed to file a response to the application or to appear to defend it. Accordingly, I permitted *ex parte* proceedings against him on 10/12/2018 and Mr. Balidawa made brief written submissions to support the application. Those and the contents of the application supported by Ms. Kinawa's affidavit, shall form the basis of my decision.

The Law and issues arising

Counsel Balidawa quoted several laws to support the application. The grounds and facts of this application are well related by the applicant and I will not repeat them here. Suffice to say, it was a ground, and I agree, that the respondent who has not sought the review, revision or even appealed against the judgment of the Sharia Court is bound by that decision.

Under Section 33 Judicature Act, the High Court is empowered to grant any remedies to any legal or equitable claim by a party in order to fully determine any matter in controversy. Likewise, under Section 34 CPA, the High Court has powers to investigate all questions arising between parties to a suit in which a decree was passed relating to the execution, discharge, or satisfaction of that decree.

A Sharia Court is one recognized under Article 129 129(1) (d) of the Constitution. All parties submitted to the jurisdiction of the Sharia Court sitting at Iganga and my Court is ceased with jurisdiction to address execution of the decrees of that Court, with full inherent powers to ensure that justice is done.

My Decision

The decision of the Sharia Court was that Jamila Kinalwa was the lawful successor of the late Amina Bilibawa (hereinafter referred to as the deceased) and that she would be the proper person to be granted Letters of Administration with respect of the deceased's estate. The Court thus appointed Jamila Kinalwa as the successor of the deceased and further ordered that she was entitled to receive land comprised in Plot 9 Nakigo Road and 7 acres of land at Buligo LC1 in Iganga Municipal Council. She was specifically allowed to secure and repossess the shop, a counter table and original title of Plot 9 Nakigo Road currently in the possession of Bakali as well as the land at Buligo South proved to have been sold off by Asuman Bakali, Kayaga Abdulla and Charles Kiirya, the two latter being LC1 officers of Buligo South.

As rightly stated by counsel Balidawa in his submissions, the respondent failed to heed successive notices to appear in Court. Failing to file an affidavit in reply to the motion indicated that he posed no contest to it. In my view, all that is required in law was done to

ensure that execution against Bakali does not commence without his knowledge. He has shown no cause why execution should not ensue. Kinawa Jamila as the successful party in the Sharia Court must be allowed to enjoy the fruits of its decision through execution.

I accordingly allow the application and order as follows:-

1. Execution of the judgment and orders of the Sharia Court sitting at Iganga in Civil Suit No. 06 of 2014 are granted in favour of the applicants
2. The applicants are entitled to immediate vacant possession of land comprised in Plot 9 Nakigo Road, Iganga Municipality and land at Buligo South LC1 Iganga measuring approximately five acres.
3. A (lease) certificate of title in respect of Plot 9 Nakigo Road Iganga Municipal Council and a counter table be surrendered by the respondent and handed over to the applicants within seven days of this order
4. The respondent shall meet the costs of this application

I so Order

.....
EVA K. LUSWATA
JUDGE
DATED: 07 /01/19