

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**[LAND DIVISION]**

**MISCELLANEOUS CAUSE NO. 103 OF 2018**

**KABOGGOZA**

**FENEKANSI:.....APPLICANT**

**VERSUS**

**WASSWA**

**SENKUNGU**

**MOHAMED:.....RESPONDENT**

**BEFORE: HON. MR. JUSTICE HENRY I. KAWESA**

**RULING**

This application was brought under Section 166 of the Registration of Titles Act Cap 230 and O. 52 rr.1 & 3 of the Civil Procedure Rules SI 71-1 seeking for orders that;

1. A vesting order be made vesting land comprised in Bulemezi Block 556 Plot 7 at Kibanga, Kakira & Mazzi, Mutuba V, East Buganda in Luwero District in the names of the beneficiaries.
2. Costs of this application be provided for.

The grounds upon which the application is premised are that;

1. The Applicant and the Respondent are together the Administrators of the estate of the late Bikongolo Isaaka.

2. The Respondent had obtained Letters of Administration without the consent of the family and an application for revocation of the same was filed in Court to which the parties consented to the new Administrators; hence, the Applicant and the Respondent became the new Administrators.
3. The Respondent has since frustrated the distribution of the said estate yet the beneficiaries agreed on the same; giving the Administrators each an extra acre and half.
4. The beneficiaries are in possession and each utilizing his/her portion as agreed.
5. The Respondent has adamantly refused to sign the transfers as an Administrator to the beneficiaries unless the female beneficiaries agreed to have and share 2 acres and the rest left for the Administrators which the Applicant has refused to do.
6. The Applicant has tried all in his capacity to convince the Respondent that they distribute the said estate in vain.
7. It is in the interest of justice that an order vesting the said land in the name of the beneficiaries.
8. The Applicant is willing to meet such terms as the Court may set.

The application is accompanied by an affidavit sworn by the Applicant wherein he, more the less reiterated the grounds above. What is manifest in this affidavit is that the Applicant wants Court to grant vesting orders in respect of each beneficiary affected by the Respondent's alleged conduct. I shall therefore not belabor to reproduce the same. The following attachments were annexed to his affidavit.

1. A copy of Letters of Administration marked as "A".
2. A copy of certificate of title marked as "B".
3. A copy of family meeting distributing the subject land amongst the beneficiaries marked as "C".
4. A copy of an inventory filed before the Chief Magistrate Court at Luwero marked as "D".
5. A copy of the survey report of the subject land marked as "E".

The application was opposed by the Respondent by filing a lengthy affidavit in reply. He first challenged the competency of the application though the substance of the objection was not illustrated. Further, he denied frustrating the distribution of the said estate, but he averred that it is the Applicant who has been playing underground methods and conniving with others to distribute the same in a manner beneficial to the Applicant alone. That the Applicant went forth to hold a family meeting wherein distribution of the subject land was done in his, and some of other beneficiaries' absence.

Further, that there was an unfair distribution of the estate on the ground that the share he was given is partly covered by a graveyard and; also that others were given rocky and unfavourable parts. That because of this unfairness, he and other beneficiaries lodged a caveat on the subject land. *A copy of the same was attached as annexure "A"*. In addition to that, he averred that several beneficiaries are not in possession of the subject land as alleged by the Applicant. Last; but not least, that the vesting order sought by the Applicant, if granted, will deprive him and other beneficiaries of their share in the estate land.

This appears as a unique case where one seeks a vesting order, on behalf of himself and others, to enforce the distribution of an estate. The dominant question is whether Court has the power to grant vesting orders as sought in this case.

Court directed both parties to file written submissions in support of their cases but only the Applicant complied. I shall henceforth consider the evidence and only the submissions, on record to determine the application.

Counsel for the Applicant cited Section 166 of the Registration of Titles Act Cap 230 as the enabling law for the order sought. I shall reproduce the Section for consideration.

*166. Registrar to carry out order vesting trust estate.*

*1. Whenever any person interested in land under the operation of this Act or any estate or interest in the land appears to the High Court to be a trustee of that land, estate or interest with the intent and meaning of any law for the time being in force relating to trust and trustee, and any vesting order is made in the premises by the High Court, the Registrar, on being served with the order or an office copy of the order, shall enter in the Register Book and on the duplicate certificate of title and duplicate instrument, if any, the date of the order, the time of its production to him or her, and the name and addition of the person in whom the order purports to vest the land, estate or interest; and upon the date of that registration as defined in section 46(3), that person shall become the transferee and be deemed to be the proprietor of the land, estate or interest.*

*2. Unless its registration is effected, the order shall have no effect or operation in transferring or otherwise vesting the land, estate or interest.*

Premised on the above Section, Counsel for the Applicant argued me to grant the vesting orders sought. He gave several reasons most of which are connected to the averments given by the Applicant. He also added that the orders sought will not in any way prejudice the Respondent on ground that they will not make him an aggrieved party. In illustrating this, Counsel premised his

view on the definition and observations of Courts, of who constitutes an aggrieved party in several cases including;

Re: ***Nakivubo Chemists [1979] HCB 12, Re: Side Botham (1880) 14 Ch. D 458, Attorney General of Gambia versus Njie [1961] and Dr. Twinobuhungiro Aska versus the Administrator of the Estate of the Late George William Kabugo HCMA No. 279 of 2015.***

I took time scrutinizing the application and the submissions in light of the above Section. Ultimately, I was much convinced that the above Section falls short of the application given the circumstances of the instant application. Much as I appreciate that the Applicant and Respondent are regarded as trustees; by virtue of their being Administrators according to **Section 26 and 180 of the Succession Act Cap 162**; I doubt that this alone brings them, or one of them, within the operation of Section 166 of the Registration of Titles Act Cap 230 given the facts herein.

It is clear that the Applicant is already registered on the subject land as one of the Administrators. This alone overrides the purpose of **Section 166 of the Registration of Titles Act Cap 230** which, in my view, envisages only scenarios where a trustee is yet to be registered. This is in fact buttressed by the fact that the purpose of a vesting order is to pass the legal interest in lieu of a conveyance/ instrument of transfer.

**See the 6<sup>th</sup> Edition of the Black's Law Dictionary at page 1564;** and the **8<sup>th</sup> Edition of the Osborn's Concise Law Dictionary at page 342** for the definition of a vesting order. It is thus illogical for the Applicant, in his capacity as trustee, to seek a vesting order, as under that Section, in order to pass legal interest in land which he already holds in that capacity.

So if a vesting order cannot be made in respect of the Applicant; another question is whether, under the said Section, it can be made in respect of other persons, merely beneficiaries. My answer to that is no because the Section envisages trustees only.

The application falls short of proof in that;

- 1) The Applicant has not shown who the beneficiaries are in whose interests he wants the vesting order to apply.
- 2) There is no justifiable reason given by evidence to show why the Applicant seeks the orders so sought.
- 3) There is evidence on record that there are disagreements regarding the management of this estate by reason of which the first administrators suing Muhamed Wasswa were revoked and Kaboggoza F was added. There must be sufficient evidence to prove that these two are not just fighting each other to the detriment of the estate. Whoever comes to equity must have clean hands. The Applicant is suspicious.
- 4) The application is not justifiable.

Before I take leave, I would like to throw a few comments on the questions herein. From the pleadings, it is clear that the concern herein is one of a standoff between the Applicant and the Respondent who happen to be joint Administrators. The rift relates to the management and distribution of the said estate. Despite there being no complaint raised by the beneficiaries, it is natural to presume that the standoff between the duo is to their manifest disadvantage, and the estate. In such cases, my view is that the appropriate remedy to one of the Administrators, or the beneficiaries, is available under the law of succession. The application therefore fails.

The parties each shall meet their own costs.

I so order.

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Henry I. Kawesa

**JUDGE**

30/05/2019

30/05/2019:

Kazinda Nasser for the Applicant.

Applicant present.

Wameli Antony for the Respondent



Respondent present.

Court:

Ruling delivered in the presence of the parties above.

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Henry I. Kawesa

**JUDGE**

30/05/2019