

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT MUBENDE**  
**MISCELLANEOUS APPLICATION NO.188 OF 2022**  
**[Arising from Civil Suit No.490 of 2015]**

1. SSERUWAGI CHARLES  
2. NABITALO GLADYS APPLICANTS

**VERSUS**

1. DAAKI SAMUEL  
2. NAGAWA HAJARA  
3. KIKOMEKO JABERI  
4. KAYIGA HASSAN  
5. MBALIRE GODFREY SALONGO RESPONDENTS

**BEFORE HON JUSTICE MOSES KAZIBWE KAWUMI**  
**RULING.**

The Applicants filed a Notice of Motion under section 98 of the Civil Procedure Act, Section 33 of the Judicature Act and Orders 24&51 of the Civil Procedure Rules with a supporting affidavit for a number of reliefs including;-

- a) A declaration that Civil Suit No.490 of 2015 John Lugolobi Vs Kasirye Antonio, Seruwagi Charles and Nabitalo Gladys abated.
- b) A declaration that the legal interest of late John Lugolobi and Antonio Kasirye the Joint tenants in land comprised in Singo Block 169 Plot 6 was extinguished or lapsed by death.
- c) An order directing the Respondents to surrender the certificate of title for the land comprised in Singo Block 169 Plot 6 to the applicants.

- d) An order directing the Registrar of Lands to vest the legal interests in land comprised in Singo Block 169 Plot 6 into the applicants as the surviving owners in the joint tenancy.
- e) Costs of the application to be provided for.

The grounds of the application are that the applicants are defendants in Civil Suit No.490 of 2015 in which the late John Lugolobi sought an order for the land comprised in Singo Block 169 Plot 6 to be distributed among the surviving joint registered owners. The certificate of title is believed to be in the custody of the Respondents.

The Applicants contend that John Lugolobi died on 15<sup>th</sup> May 2020 and no one has applied to administer his estate. All the other joint tenants on the title to the land comprised in Singo Block 169 Plot 6 being Gitta Antonio, Kasirye Antnio, R. Mugambwa, Robert Nakkumanyanga and Richard Manyangwa are also stated to have passed on leaving the applicants as the only surviving joint tenants.

It is contended by the Applicants that the time prescribed by law for applying to court for one to be appointed as a legal representative in Civil Suit No.490 of 2015 has since elapsed and the suit abated. The applicants further contend that under the doctrine of survivorship the land passed on to them as the only surviving joint tenants.

In the Affidavit in Reply filed by the 1<sup>st</sup> Respondent, it is contended that the land comprised in Block 169 Plot 6 is clan land and the joint tenants were registered on the title as the direct clan members. It is contended that the Applicants were registered on the title as joint owners/tenants in trust for the family and the application connotes bad faith and an intention to deprive the children and grandchildren of their stake in the land.

The Respondents contend that all the registered joint owners have developments on demarcated portions and granting the reliefs sought by the applicants would deprive their families of the use of the clan land. The Respondents contend that they are in the process of acquiring Letters of Probate to the estate of John Lugolobi who was the Plaintiff in Civil Suit No.490 of 2015.

### **Representation.**

M/S Kakona & Kwotek Advocates appeared for the Applicants while M/S Mutalya & Co. Advocates appeared for the Respondents.

Counsel for the Applicants filed submissions which were not replied to by Counsel for the Respondents.

### **Consideration and determination.**

Counsel for the Applicants framed five issues for resolution by the court. I however find them to be repetitive and not aligned with the pleadings filed. Invoking Order 15 rule 5(1) of the Civil Procedure Rules I deem the issues relevant for determination of the application to be:-

1. Whether Civil Suit No.490 of 2015 abated on the death of John Lugolobi.
2. Whether the death of the joint tenants in the land comprised in Singo Block 169 Plot 6 vests the legal interest in the land into the Applicants.
3. Remedies available to the parties.

### **Resolution of the 1<sup>st</sup> issue.**

**Whether Civil Suit No.490 of 2015 abated on the death of John Lugolobi.**



**The Black's Law Dictionary, 11<sup>th</sup> Edition** defines the term "**abatement**" as *"the suspension or defeat of a pending action for a reason unrelated to the merits of the claim."*

The applicants contend that since the death of John Lugolobi on 15<sup>th</sup> May 2020 the Respondents have not taken any steps to have Civil Suit No.490 of 2015 concluded and it abated on account of the delay. The 3<sup>rd</sup>,4<sup>th</sup> and 5<sup>th</sup> Respondents were appointed as Executors of the Will left by John Lugolobi the Plaintiff in Civil Suit No.490 of 2015.A copy of the Will was annexed to the Application.

In the Affidavit in Reply filed by the 1<sup>st</sup> Respondent, he states that they are still sorting out some pertinent issues in respect to the estate and were to accordingly notify court of the executors or administrators of the estate. The Affidavit was drafted and filed by Counsel for the Respondents on 23<sup>rd</sup> February 2023.

Counsel for the Applicants cites Order 24 rule 3(1) and (2) of the Civil Procedure Rules for the contention that the suit abated. It is provided that:-

**Order 24 rule 3(1):**

*'where one of two or more plaintiffs dies and the cause of action does not survive or continue to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the cause of action survives or continues, the court, on an application made for that purpose, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit.'*

**Order 24 rule 3(2);**

*"Where within the time limited by the law no application is made under sub rule (1) of this rule, the suit shall abate so far as the deceased plaintiff is concerned, and, on the application of the defendant, the court may*



*award to him or her the costs which he or she may have incurred in defending the suit to be recovered from the estate of the deceased plaintiff."*

I have failed to find any provision setting out the period within which a person has to apply to court to substitute a deceased plaintiff much as **Order 24 rule 3(2)** refers to **"the time limited by the law."** The death of the Plaintiff in Civil Suit No.495/2025 on 15<sup>th</sup> May 2020 and the filing of the application on 4<sup>th</sup> October 2022 however points to a period of two years and five months of inactivity on the part of the Respondents but I find no basis on which to find that the suit abated.

The applicants who introduced the evidence of the WILL appointing the 3<sup>rd</sup>,4<sup>th</sup> and 5<sup>th</sup> Respondents as Executors in the WILL could have filed an application for the court to make them or any nominee a party to the suit under **Section 222 of the Succession Act**. Merely waiting for the suit to abate as argued by Counsel for the Applicants smacks of bad faith in the opinion of the court.

The suit is between clan members and involves a number of families to be potentially affected by whatever outcome. I order the Respondents to acquire Letters of Probate to the estate of John Lugolobi and apply to be joined to the suit within 90 days from the date of this Ruling.

**Resolution of the 2<sup>nd</sup> issue.**

**Whether the death of the joint tenants in the land comprised in Singo Block 169 Plot 6 vests the legal interest in the land to the applicants.**

**Section 56 of the Registration of Titles Act** defines a **"joint tenancy"** as *"where two or more persons who are persons who are registered as joint tenants shall be deemed to be entitled to the land as joint tenants."*

**The Black's Law Dictionary,11<sup>th</sup> Edition** defines the term **"joint tenancy"** as-



*“a tenancy with two or more co-owners who are not spouses on the date of acquisition and have identical interests in a property with the same right of possession. A joint tenancy differs from a tenancy in common because each joint tenant has a right of survivorship to the other’s share...”*

A perusal of the registration page of the certificate of title for the land comprised in Singo Block 169 Plot No.6 shows the proprietors as Antonio Gitta, Charles Seruwagi, John Lugolobi, Antonio Kasirye. G.Nabitalo. R.Mugambwa, Robert Nakkumanyanga, Richard Munyagwa and Lugolobi.

The contention by the Respondents to the effect that the joint tenants were registered on the certificate of title in trust for the family does not hold. A trust should have been registered under the relevant Law if the intended purpose of preserving the land for posterity was to be realized.

**Under Section 56 of the Registration of Titles Act** the registered proprietors are deemed to be joint tenants hence the doctrine of survivorship restricts the freedom of alienation of the property. The interests of dead owners pass on to the surviving co-owners. The Applicants claim that all the co-owners died and their interests should be transferred to them.

I find no confirmatory evidence to prove the assertion save for the fact that John Lugolobi died on 15<sup>th</sup> May 2020. The Applicants made an attempt to prove the death of the joint owners by relying on Death certificates issued by Mityana District Local Government on 2<sup>nd</sup> April 2012 save for that of Kasirye Anthony Gitta that was issued by NIRA on 6<sup>th</sup> April 2021.

**The Registration of Persons Act, 2015** provides for the creation of the National Information Registration Authority (**NIRA**) which came into



operation on 26<sup>th</sup> March 2015. Under section 41 of the Act registration of every death within Uganda is free and compulsory.

**Under section 48(3) of the Act** information contained in a certificate of death issued by NIRA is presumed to be correct and received as evidence in any judicial proceedings. I fail to find comfort in the use of Death certificates issued by a District Local Government yet the structured reporting of death and registration of the same are set out in the Act. The Saving provisions in the Registration of Persons Act do not also provide for death certificates issued before its commencement date to be usable in judicial proceedings.

For the applicants to apply for the interest of the joint co-owners to be vested into them, they had to prove that they are the only surviving registered owners which was not done. The application fails on that account.



Moses Kazibwe Kawumi

Judge

26<sup>th</sup> May 2023.