

*Copy*

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT MBALE  
HCT-04-CV-CR-0005/2003**

**MAKUMBA JAMES .....APPLICANT**

**VERSUS**

**WATSEMBA SIKOLA.....RESPONDENT**

**BEFORE: THE HON. MR. JUSTICE RUGADYA ATWOKI**

**REVISIONAL ORDER**

This matter came to the attention of the Chief Magistrate Mbale during the course of his routine inspection of the courts. He forwarded the same to this court for a possible revision order, to correct what appeared to him to be glaring contradictions in the judgement of the lower court.

Briefly the facts out of which this case arose were as follows. The plaintiff was the customary heir to the estate of his late father. The defendant was one of the wives of the deceased. She was living in the house, the subject of the dispute with her husband and their two living children two others having died. At the death of the husband, the plaintiff sought to get her out of the house in order to put it under his administration as the heir, for the benefit of the other dependants and beneficiaries of the estate. She resisted hence the suit.

In his judgement, the Grade II Magistrate found that the defendant was entitled to live in the suit house with her children. However, he later in the

same judgement stated that the defendant should sit with the plaintiff and ensure that the property of the deceased including the suit house be distributed among the beneficiaries according to the law.

The Magistrate found from the evidence that the defendant was the third wife of the deceased. He also made a finding of fact that each of the other wives and their respective children remained in the residential houses they respectively occupied prior to the death of their husband.

I did not find any problem with the first part of the judgement, and I have no reasons to disturb the same, regarding the findings and holding of the Magistrate that the defendant is entitled to live in the suit house with her children. She was living in that same house with her husband and their children before he died. This was their principal residential holding for purposes of S. 29 of the Succession Act. Each of the other two wives had their own separate residential holdings, and they continued to live in the same. This was the arrangement obtaining in respect of the other wives of the deceased, for each to continue living in the house where they lived with their husband while he was still alive. That is what is indeed lawful.

Having found from the evidence that the suit house was the residential property where the defendant was living with her husband and their children before his death, that meant suit property was protected under S. 29 of the Succession Act, to which the Magistrate rightly referred.

It was therefore contradictory for the learned Magistrate, when making the order for the proper distribution of the estate of the deceased to include the

principal residential holding of the defendant among the assets for distribution. That was contrary to the law. Section 26 of the Succession Act provides that the principal residential holding of an intestate deceased is to be held by the personal representative in trust for the legal heir subject to the rights of occupation and terms and conditions set out in the 2<sup>nd</sup> schedule. (Emphasis added).

The 2<sup>nd</sup> schedule to the succession Act contains rules relating to the occupation of residential holdings. Rule 1(1) provides as follows;

- (1) In case of a holding occupied by the intestate prior to his death as his or her principal residence, any wife or husband, as the case may be, and any children, under 18 years of age if male, or under 21 years of age and un married if female, who were normally resident in the residential holding shall be entitled to occupy it.

Rule 8 makes provision for termination of such occupancy, upon the occurrence of any of the events, which are laid out in that rule. These include remarriage in case of a wife, death of an occupant, children attaining the age of 18 if male or 21 years if female, non occupation of the residence for a continuous period of six months, and or, surrender in writing of the occupancy.

None of the above matters were alleged. The trial Magistrate did not find any non compliance with the terms of occupancy as laid out in the 2<sup>nd</sup> schedule to the succession Act cited above by the defendant. She according to the law is therefore entitled to live and remain in the suit house, subject to compliance with the law.

The suit house is therefore protected under S. 29 of the Succession Act from, and will not form part of the assets for, distribution among the beneficiaries as part of the estate of the deceased. It will remain under occupancy of the defendant and her children as ordered by the trial Magistrate. The judgement of the learned trial Magistrate is revised to that extent.

I noted that the Magistrate did not make any orders as to costs. This being a succession cause that may well be the best course of action, that each party bears its own costs. It is so ordered.



**RUGADYA ATWOKI**

**JUDGE**

**12/05/05.**

Order: The Deputy Registrar shall deliver this ruling to the parties.



**RUGADYA ATWOKI**

**JUDGE**

**12/05/05.**