

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**(LAND DIVISION)**

**MISC. CAUSE NO. 07 OF 2020**

**1. AYISA NASSUNA**

**2. MUSA LUKUSA:.....:APPLICANTS**

**VERSUS**

**COMMISSIONER LAND REGISTRATION:.....:RESPONDENT**

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

**RULING**

This application was brought by notice of motion under Section 33 of the Judicature Act Cap 33, Section 98 of the Civil Procedure Act Cap 71 and O.52 r1,2 & 3 of the Civil Procedure Rules S.1 71-1.

The application seeks orders that;

1. The Commissioner Land Registration be ordered to make a white page (create a certificate of title) of **land comprised in Busiro County Block 489-492, plot 38 Wakiso District (hereinafter the suit land).**
2. Costs of the application be provided for.

The grounds of the application are supported by an affidavit deponed by the 1<sup>st</sup> Applicant. The application is unopposed by the Respondent despite being duly served, and it shall proceed *ex-parte* against her.

Counsel for the Applicant filed written submissions, the details of which are on Court record, which I have considered.

It is averred that the Applicants are administrators of the estate of the late Torofina Nabanja, *a copy of Letters of Administration was attached in proof thereof.*

That there upon getting the said *Letters of Administration*, the Applicants embarked on the process of registering the suit land measuring 2.847 hectares as part of the said estate. That in October 2010, a mutation form of the suit land was approved, and a blue print, an area schedule form, and re-survey report made. *Copies of all these documents were attached as annexure B.*

That before the white page could be made in their favour, they were informed by the Respondent's officials that the blue page of the suit land could not be traced and that their efforts have been in vain. Further, that they were reliably informed by the Respondent's officials that the only way they could be registered on the suit land is by moving Court for orders compelling the Respondent to finish the process.

I already noted that the application is unopposed. According to the case of *Samwiri Mussa versus Rose Achen (1978) HCB, 297 Ntabgoba Ag. J, (as he then was)* held that;

*'Where facts are sworn to in an affidavit and they are not denied or rebutted by the opposite party, the presumption is that such facts are accepted'.*

The above case still represents the correct position of the law, and has been followed up to date. See *Ssemanda Paul & Anor versus Nakato Lukwago Joyce & Others; HCMC No. 50 of 2019*. As such, I find no reason for deviating from it.

This application binds the Respondent. Her failure or refusal or/and neglect to file the affidavits in reply when she was duly served with the application is clear indication that she never intended to challenge the application. As a consequence, this Court presumes that she admitted all facts contained in this application.

Consequently, I find it proper to exercise this Court's discretion and hereby grant the application in the following terms:

1. That the Respondent registers the Applicants as administrators of the estate of the late Torofina Nabanja on land comprised in Busiro County Block 489-492, plot 38 Wakiso district.
2. No costs granted.

I so order.

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Henry I. Kawesa

**JUDGE**

12/11/2020

12/11/2020:

2<sup>nd</sup> Applicant present.

1<sup>st</sup> Applicant absent.

Respondent absent.

Counsel for the Applicants absent.

Court: Ruling communicated to the 2<sup>nd</sup> Applicant.

.....

Henry I. Kawesa

**JUDGE**

12/11/2020