

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
(EXECUTION AND BAILIFFS DIVISION)**

**MISCELLANEOUS APPLICATION NO. 1129 OF 2017  
(ARISING OUT OF EMA NO. 1087 OF 2016)**

**ADMINISTRATORS OF THE LATE ESTATE OF LATE YOZEFU MUKIIBI  
..... APPLICANTS**

**VERSUS**

**ADMINISTRATOR GENERAL & 10 OTHERS ..... RESPONDENTS**

**BEFORE LADY JUSTICE FLAVIA SENOGA ANGLIN**

**RULING**

By this application made under 0.24 rr 4 and 5, 0.41 r 1 and SS 33 and 38 of the Judicature Act, the Applicants sought orders of this court:-

- 1) Nominating any one of the Respondents as legal representatives of the late John Mary Serunjogi with a view to be added as a party in place of the deceased John Mary Serunjogi, to enable court to proceed and dispose of execution proceedings vide execution cause No. 1087 of 2016
- 2) An injunction against the Respondents and such persons who derived interest from the Respondents, jointly or severally, or from the late John Mary Serunjogi in land at Maganjo of the estate of the late Yozefu Mukiibi to issue forbidding and restraining the Respondents, their agents, servants or such other persons said to have derived interest in the said land from the Respondents or from the late John Mary Serunjogi, from dealing with the land in any way that alienates, wastes or damages the interest of the estate of the late Yozefu Mukiibi Serunjogi until the court disposes Execution case No. 1087/2016

Costs of the application were also applied for.

The grounds of the application are that:-

- I. The Applicants are the surviving children and beneficiaries of the estate of the late Yosefu Mukiibi formerly of Maganjo, and by grant of court, Administrators of the estate of late Yozefu Mukiibi.

II. Long before his death, the Late John Mary Serunjogi was stripped of the Administration powers of the estate of late Yosefu Mukiibi and ordered to permanently cease any dealing with the estate of the late Yosefu Mukiibi and to file an inventory for the years he was its administrator.

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III. For the Applicants to be able to discharge their duty and mandate as Administrators of the estate of late Yosefu Mukiibi, they demanded that John Mary Serunjogi, then stile alive, and his family vacate the land belonging to the estate of the late Yosefu Mukiibi, which demand was neglected.

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IV. John Mary Serunjogi died before the court could proceed to determine execution proceedings against him and by extension, against his family, that is, wife and children, who have since Serunjogi's death, undertaken acts that undermine the estate of late Yosefu Mukiibi, acts that waste, or are intended to alienate the subject land from the estate of late Yosefu Mukiibi.

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V. It is one or more of the Respondents that can take up capacity as legal representatives of the late John Mary Serunjogi's estate.

The application is supported by the affidavit of the Applicants.

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There is an affidavit in reply deponed by the First Respondent, the Administrator General. The affidavit is to the effect that John Mary Serunjogi is dead and his death was reported to the Administrator General- Annexure A certified copy of report of death.

25 The beneficiaries to the estate of late Serunjogi were authorized by the Administrator General to convene a meeting to appoint person(s) to be issued with a Certificate of No Objection – Annexure B.

30 The widow and nine adult children of late Serunjogi are capable of administering the estate. And the widow's rights override those of the Administrator General.

The Administrator General objects to being nominated as legal representative to the estate of late Serunjogi for purposes of being added as a party in order for court to proceed and dispose of execution proceedings in EMA 1087/2016.

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There is a joint affidavit in reply of the 2<sup>nd</sup> – 11<sup>th</sup> Respondents where it is contended interalia that, the Applicants have not filed an inventory to show that the suit land was part of the estate of late Yosefu Mukiibi. And there is no act or order declaring that land to be part of the estate of late Mukiibi and therefore subject to their management. Therefore that for the Applicants to require the 2<sup>nd</sup> -11<sup>th</sup> Respondents to vacate the land is unlawful.

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That when the suit filed by late Serunjogi was dismissed, the Applicants were only given costs.

5 The application for execution is intended to mislead court as the only option open to the Applicants was to sue late Serunjogi for vacant possession and a declaration that the land formed part of the estate of late Mukiibi.

The execution is only intended to deprive the Respondents of land they have occupied for over 20 years with the Applicant's knowledge.

10 The suit, the Applicants had filed in that respect was withdrawn under unclear circumstances and now they want to execute an order of vacant possession they do not have.

15 Execution cannot be carried out against late Serunjogi but only his estate and the Respondents have embarked on the process of acquiring letters of administration and are yet to get a certificate of no objection from the Administrator General- Annexure B.

To proceed with execution against the Respondents in their individual capacities will have far reaching consequences.

20 The application for execution is not in line with the decree the Applicants are trying to enforce.

The 2<sup>nd</sup> – 11<sup>th</sup> Respondents are in occupation of the suit land which belonged to late Serunjogi and the Applicants are illegally claiming the same.

25 While the Applicants have reported a case of trespass, the land in dispute has never been declared to be part of the estate of late Mukiibi and subject to their administration.

30 Since the Respondents and not the Applicants are in possession, there is no way the land will be destroyed or alienated to the detriment of the Applicants and there is no need to maintain the status quo.

35 The Applicants will not suffer any irreparable damage if the injunction is not granted, whereas the injunction would affect the activities of the Respondents on the land and will amount to predetermining that the land is part of the estate of late Mukiibi.

The balance of convenience is therefore in favor of the Respondents who are more likely to suffer hardship.

40 There is an affidavit in rejoinder, of the Applicants; where they assert that, the order revoking the Administration Powers of late Serunjogi took immediate effect after judgment was pronounced.

And that the Applicants filed an inventory of the estate of late Yosefu Mukiibi and therefore the demand for late Serunjogi and his estate to vacate the land was in order.

5 The grant to late Serunjogi having been revoked, he had to hand over the entire estate of late Yosefu Mukiibi, which was under his administration. That this included the suit land which he refused to hand over hence the execution proceedings.

10 The Respondents were served with court process, and their alleged occupation of the suit land did not bestow upon them any better interest than Serunjogi had in the land.

The execution proceedings are against the estate of late Serunjogi in whatever form it may be to date.

15 The Respondents are sued as beneficiaries to the estate of late Serunjogi and not in their individual capacities and are therefore bound by the court order in Administration Cause 02/2010.

The current application is consistent with the decree of court and a natural consequences thereof.

20 The decree is clear and self explanatory as to the true ownership of the suit land and the Applicant's not being in occupation of the land does not alienate the interest of the Applicants in the property as beneficiaries and administrators of the estate of late Mukiibi.

25 The inconvenience and damage to be suffered by the Respondents arises out of legitimate process of law and is designed to enforce the orders of court.

The application is accordingly properly before court, more so as the Respondents have not disclosed the nature and interest superior to that of the Applicants that warrants courts protection.

30 Court was urged to allow the application to assist the Applicants realize the fruits of the judgment in Administration Cause No. 02/2010.

The application was called for hearing on 21.06.17, in the presence of all Counsel.

35 Counsel for the Applicant went through the provisions of the law under which the application was made and the orders sought.

He pointed out that prayers 1 and 2 were to be made as alternative prayers.

The highlights of the supporting affidavit were stated to be that, the Applicants were the surviving children of late Yosefu Mukiibi. Their other siblings have since passed away and they are the holders of letters of Administration to the estate of the deceased – Annexure YM<sub>1</sub>.

- 5 The grant followed a revocation of the earlier grant to John Mary Serunjogi (now deceased) - Refer to decree of court Annexure YM<sub>3</sub>.

10 The revocation was done after court determined that John Mary Serunjogi before his death had obtained letters of Administration and undertaken to alienation and wasting of the deceased's estate to the detriment of other beneficiaries.

Upon getting powers of Administration, the Applicants demanded that John Mary Serunjogi peacefully vacates the land at Maganjo- approximately two (2) acres- belonging to the estate of late Yosefu Mukiibi – Annexure YM<sub>4</sub>.

15 John Mary Serunjogi then filed HCCS 126/14 in the Family Division. The suit was dismissed for want of prosecution – Annexure YM<sub>5</sub>.

20 Having failed to find an amicable solution for late John Mary Serunjogi and his entire estate to vacate the estate of late Yosefu Mukiibi, the Applicants filed execution proceedings seeking eviction and or vacant possession of the Suitland. That is, they sought to enforce the decree – Annexure YM<sub>6</sub>.

25 The file disappeared before the application could be fixed. The task of reconstructing the file was concluded in May, 2017.

The application for execution could not be heard in those circumstances. In the course of waiting, John Mary Serunjogi passed away.

30 As a result of his death, the 2<sup>nd</sup> -11<sup>th</sup> Respondents have continued to engage in acts undermining the legitimacy and interest of the estate of late Yosefu Mukiibi and the land under the guise that it was their later father's or husband's land respectively.

35 The Applicants contended that, the question of ownership of the land at Maganjo was settled by the trial court – Annexure YM<sub>3</sub>.

The court restrained the late John Mary Serunjogi from engaging in any further dealing in the land as it belonged to late Yosefu Mukiibi.

40 Court was referred to the affidavit in reply of the 2<sup>nd</sup> -11<sup>th</sup> Respondents and Annexure B – declaration of death, together with Annexure A to the First Respondent's affidavit. The

Annexure indicates the beneficiaries to Serubnjogi's estate similar to that of the 2<sup>nd</sup> – 11<sup>th</sup> Respondents where the Respondents claim that the disputed land forms part of the estate of late Serunjogi, yet, Counsel argued, the land was adjudged to belong to late Yosefu Mukiibi. But they want to take over the land.

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Counsel asserted that, the estate of late John Mary Serunjogi continues to alienate the estate of late Yosefu Mukiibi.

10 Referring to paragraph 5 of the affidavit in reply of the 2<sup>nd</sup> -11<sup>th</sup> Respondents, the Respondents claim that the act of requiring John Mary Serunjogi to give up the land of late Mukiibi was unlawful, since no inventory had been filed to indicate that the suit land was part of the estate of late Mukiibi; it was contended that, the paragraph indicates that the Respondents acknowledged that the Applicants have letters of Administration to the estate of late Yosefu Mukiibi. And that, vested with their Administrative Powers, they asked late Serunjogi to vacate the disputed land  
15 but he refused because no inventory had been filed.

Commenting about the contention that the order to vacate the land is not from a court of competent jurisdiction, Counsel for Applicants referred to Annexure YM<sub>2</sub> – Letters of Administration acquired in 2002 from Grade I Court at Kasangati.

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He referred to S.2 (2) of the Administration of Estates, Small Act and submitted that, the import of the section is that ***“a Magistrate Court can grant letters of Administration. Where they supersede jurisdiction, the High Court may only revisit that if an injustice was done”***. The Magistrates Court exercised jurisdiction in this case.

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The consequential orders of vacant possession to the Applicants are fortified by the principle that, ***“what is good for the goose is good for the gander.”*** And the principle of law is ***“equality before the law”***.

30 The case of the **SCCA 52/95 Israel Kabwa vs. Martin Banoba Musiga P.5 – S.191 Succession Act – “Letters of Administration entitle the Administrator to all the rights belonging to the interstate as effectually as if the administration has been granted at the moment after his death”**.

35 Counsel then argued that, the moment the Applicants got Letters of Administration, they were entitled to vacant possession of the disputed land. And pointed out that, the Letters of Administration of the Applicants are not contested and have not been revoked.

40 It was further pointed out that the question in **Kabwa's case** was **whether a beneficiary would sue to obtain and protect an estate where he had beneficial interest**. And the Supreme Court

stated that ***“yes a beneficiary can sue to prevent wastage of an estate where he/she has a beneficial interest”***.

5 Article 274 of the Constitution was also relied upon for the provision that ***“all laws that exist at the time of coming into force of the Constitution shall be read with the necessary qualifications and adaptations to suit the Constitution”***.

10 Counsel then stated that the judgment can be read to mean that beneficiaries can be sued and removed by an estate from the property of that estate where those belong to a different estate.

That the beneficiaries of late John Mary Serunjogi do not have any locus in the estate of later Mukiibi. If they do, they can claim under their father’s right. But being dead after court revoked his powers over the estate, they have no entitlements to remain on the suit land.

15 As matters stand now, they are engaging in acts of alienation and wastage of the estate of later Mukiibi as evidenced in the affidavit of the First Respondent.

20 It was then prayed that the court allows the Applicants to forcefully evict the 2<sup>nd</sup> -11<sup>th</sup> Respondents from the suit land and grant vacant possession of the property to the Applicants.

The grant was received on 29.05.13, and John Mary Serunjogi died in August, 2016, but had refused to move from the land.

25 That according to the decision of the Supreme Court, S. 14 (2) of the Judicature Act – gives the hierarchy of laws: written law, Common law and decisions forms part of common law. It is applied where there are gaps in written law. The decision fills gaps in the Succession Act -

30 Beneficiaries: – what happens to beneficiaries of estate that has no Administrator, who engage in alienation and wastage of property of an estate that has Administrators?

Reading equality into the decision of the Supreme Court in light of Article 274 of the Constitution, Counsel argued, this court can and should allow and order Applicants to levy execution against the estate of the late Mary John Serunjogi in whatever form it may subsist to date, by way of removal from the land, to obtain vacant possession thereof.

35 Alternatively, that the Administrator General by virtue of the Administrator General’s Act SS 3 and 4, read together with especial S.4 (4) withstanding the discretion to take up Administration of estate, court may order that he takes up administration for reasons court may give.

While the Administrator General is not willing to do so, since there has been application to administer estate by 2<sup>nd</sup> -11<sup>th</sup> Respondents, part of the estate is land that is already adjudged to belong to another estate.

- 5 The Administrator General should be directed to take up Administration of the estate of the late Serunjogi with a view to protect what belongs to the estate of late Mukiibi.

The Administrator General should not release the certificate of no objection to the estate of late Serunjogi – S.5 Administrator General’s Act.

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The court would have protected the interest of late Yosefu Mukiibi now under threat from the estate of late Serunjogi.

- 15 If court chooses to grant that prayer, then it should also order that all activities by the 2<sup>nd</sup> -11<sup>th</sup> Respondents and by whomsoever else deriving \_ interest in the subject from the estate of late Serunjogi be barred from dealing with the subject land at Maganjo in whatsoever manner and form (including cultivation) until the Administrator General harmonizes the interest of late Yosefu Mukiibi.

- 20 The same prayer subsists if court requires sometime to make decision in this application. Counsel for the Applicants so prayed.

In reply, Counsel for the Administrator General referred to the affidavit in reply deponed by the Administrator General.

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He pointed out that the report of death of late Serunjogi John Mary was made to the Administrator General by one Semogerere Mukiibi Deogratiuous – a child of the deceased under Administration Cause No. 1981/16, Mengo Court on 03.08.16. The death certificate is attached Annexure “A”.

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On 15.08.16, the beneficiaries of the estate of the late Serunjogi obtained a letter from the office of the Administrator General, addressed to the Chief Administrative Officer (CAO) Wakiso District, to convene a family meeting for purposes of appointing a family member to be issued with Letters of Administration – Annexure D.

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According to the report to the Administrator General, the deceased is survived by a widow and nine (9) adult children- that is the 2<sup>nd</sup> – 11<sup>th</sup> Respondents.

- 40 That the said beneficiaries are capable of administering the estate of late Serunjogi and that the widow’s rights override the rights of the Administrator General in administration matters.



Further that, it is the discretion of the Administrator General to administer estates. In performance of the duties the role and mandate of the Administrator General comes into play in exceptional circumstances where it plays its Public Trustee role, for example, in estates of minors, missing persons and persons of unsound mind.

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It was pointed out that, the estate of the late Serunjogi John Mary does not fall under the above mentioned exceptional circumstances, to warrant the Administrator General to take over administration.

10 It was emphasized that, the Administrator General does not administer estates for liability purposes, specifically the estate of late Serunjogi, whereupon the Applicants wish to execute against the Administrator General.

15 The Administrator General, it was added, objects to its nomination as legal representative of the estate of late Serunjogi for purposes of being made a party, in order for the court to proceed and dispose of execution proceedings vide Execution Cause No. 1087/16.

And that the beneficiaries to the estate of late Serunjogi are adults who include adult children and a widow.

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The Administrator General, in invoking its discretion will not apply and obtain Letters of Administration to the estate of late Serunjogi.

Counsel for the 2<sup>nd</sup> – 11<sup>th</sup> Respondents opposed the application.

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He argued that the application has no merit and it is a misrepresentation that Applicants were granted orders of eviction of Respondents from the land at Maganjo, forming part of the estate of late Mukiibi.

30 He referred to Annexure YM<sub>6</sub> – application for execution of decree – where the parties are the Applicants/Judgment Creditors and late John Mary Serunjogi. They require court to evict or give vacant possession of the disputed land and costs. The application is in respect of Administration Cause No.02/10.

35 Court was also referred to the decree the Applicants seek to enforce- Annexue YM<sub>5</sub> – where Letters of Administration issued to Serunjogi were revoked, injunction granted and Plaintiffs/Applicants were approved as Administrators of the estate of late Mukiibi. Serunjogi was required to surrender Account of the estate and pay costs.

40 That nowhere is it indicated that Applicants had a right to seek vacant possession from late Serunjogi.

Counsel then submitted that, court cannot enforce orders parties do not have. Even consequential orders have to be granted by court.

- 5 The order arising out of Civil Suit 126/14- Annexure YM<sub>5</sub>- the suit lodged by the late Serunjogi, against the Applicants – shows what was granted by court that is, costs. It did not grant vacant possession against the late Serunjogi.

10 There is an irrefutable presumption in law that the Applicants before court in that suit never filed a counter claim.

And it is not true that the question of ownership of land at Maganjo was settled by the trial court and therefore forms part of the estate of late Mukiibi.

- 15 It was admitted that there was contention in respect of the land which was inherited by late Serunjogi in 1954 and he had been in occupation thereof and had raised his family thereon. But therefore that, even by the Applicants revoking Letters of Administration and court declaring their right to administer the estate of late Mukiibi, it did not subject the suit land to the Administrators. The estate had been distributed.

20 And that owing to the fact that late Serunjogi had lived on the land uninterrupted since 1954 until 2006, when his occupation was disrupted by the Applicants, the Respondents who are beneficiaries of late Serunjogi have a valid title stemming from the law of limitation.

- 25 Counsel then asserted that all these issues would have been rightly settled in Civil Suit No.623/16 filed by the Applicants against the Respondents in the Land Division. But the suit was withdrawn without notice to the Respondents.

30 That this can only be interpreted to mean that the Applicants are using the current proceedings as a short cut to deprive the Respondents of the land that rightly belongs to them. And also mislead court to illegally exercise its jurisdiction.

It was emphasized that there is no order granting the Applicants vacant possession or eviction of the Respondents from the suit land.

- 35 Further that S. 278 of the Succession Act requires an Executor or Administrator to within six (6) months from grant of probate or Letters of Administration or within such further time as court may appoint, extract an inventory containing a true and full estimate of all the property in possession and all Credits and debts owing by any person to which the Executor or  
40 Administrator is entitled in that character to the court which granted Letters of Administration or Probate.

The question, Counsel insisted, is **whether the Applicants filed an inventory in the said time indicating that the land at Maganjo formed part of the estate of late Mukiibi**. No, Counsel stated. Adding that, the provision refers to property they possess and that late Serunjogi was in  
5 possession of the property.

That the purported notice to require late Serunjogi to vacate the land was of no use, because if the Applicants realized that Serunjogi was illegally asserting his rights on the land, they ought to have sued him for court to declare the disputed land as part of the estate of late Mukiibi and for  
10 an eviction order.

Letters of Administration or probate, Counsel added, do not grant a party an inherent right to require vacation of a property the holder of the grant assumes to be under his/her management until there if a court decision to that effect.  
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It was then prayed that the application be dismissed.

Commenting about the alternative prayer of the Applicants and paragraph 11 of the Respondents' reply, Counsel submitted that the Respondents have taken steps to administer the estate of late Serunjogi. Therefore that, the prayer that the Administrator General should take up  
20 administration should be disregarded.

As indicated by the Administrator General, this is not one of the exceptional cases where Administrator General takes up administration.  
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Therefore, Counsel stated, the court should grant the Respondents time to get Letters of Administration to the estate of late Serunjogi. And the prayer that no letter of no objection should be granted will curtail the Administrator General's powers.

30 And for an injunction to be granted, the Applicants have to prove threat of alienation of the suit land or destruction and no such evidence has been adduced.

While it is stated in paragraph 10-12 of the supporting affidavit that a report was made to Police complaining of trespass, no report was attached.  
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And in paragraph 12 of the supporting affidavit, the Respondents claim that the land belonged to their father, but that the matter was determined in the negative. Neither the decree nor the order attached reflects such a decision.

Further that, there is no status quo to maintain. The Respondents are in occupation of the suit land. The injunction will only cause hardship to the Respondents by curtailing their activities on the land. The Balance of convenience is in the favor of the Respondents.

5 Counsel prayed court to disregard the injunction, arguing that it will have the effect of determining the issue that the suit land forms part of the estate of late Mukiibi, which should be decided by separate suit.

It was prayed that the application be dismissed with costs to the Respondents.

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In rejoinder, Counsel for the Applicants referred court to S.4 (5) (a) of the Administrator General's Act, and submitted that any arguments brought to court by the Administrator General are washed away.

15 Also that the alleged misrepresentation of the eviction order as disproved by Annexure YM<sub>6</sub> which prays for order of eviction.

Courts mandate is derived from Annexure YM<sub>5</sub> – decree of court together with S.192 of the Administrator General's Act: that if an interstate had property, it vests in the Administrators.

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That Letters of Administration were revoked and granted to the Applicants, they became entitled to whatever late Mukiibi could do, including vacation of his property.

HCCS 126/12 was dismissed. The Applicants had what they have and Respondents failed to challenge it.

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Evidence as to ownership and inheritance are questions determined at trial court which cannot be done now. It resulted into a decree. The land was held in trust for all the other beneficiaries who were minors when their father died – See Annexure YM<sub>2</sub>.

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Denying that the Applicants were trying to mislead court, Counsel contended that the Execution Division has a right to give purpose to the decision of court. The Applicants are Administrators and therefore have to deal with administration and therefore can be given vacant possession of the estate.

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Inventory: That non filing of inventory cannot be a factor in dispossession of property. Late Serunjogi never filed any inventory. And if the file had not disappeared, the inventory of the Applicants would be seen. The inventory would be made to court and failure to declare property does not take away ownership of the same.

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Threat forming property of Mukiibi – court was referred to affidavit of the Administrator General. As regards Police reports, it was Counsel’s assertion that Counsel for the Respondents should have cross-examined the Applicants or bring the Police Officer.

- 5 - Status quo- that what is prayed for is an injunction which has wide ramifications. Hardship to be occasioned is considered when there is no prima facie case or irreparable damage. Test is to suffer hardship. Counsel prayed as before.

The issues for court to determine are:-

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**1) Whether court can nominate any of the Respondents as legal representative of late John Mary Serunjogi with a view to being added as a party in lieu of late John Mary Serunjogi, to enable court proceed with dispose of execution proceedings in EMA 1087/2016.**

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**2) Whether this is a proper case for issue of an injunction.**

I wish to state from the outset that I have heard the submissions of all Counsel and given them the best consideration I can in the circumstances. It is apparent that in Counsel for the Applicant and Counsel for the 2<sup>nd</sup> -11<sup>th</sup> Respondents delved into many other issues that cannot be delved in at this stage. I will therefore limit my ruling to the issues formulated from the body of the application in the order that they have been set out.

**25 Whether court should nominate any of the Respondents as legal representatives of the late John Mary Serunjogi.**

It is clear from the submissions of Counsel for the Applicants that the preference of the Applicants in this regard was for the Attorney General to take up Administration of the estate of late John Mary Serunjogi, so that estate of the late Yosefu Mukiibi which is in dispute can be protected.

Further that the Administrator General should not release the certificate of no objection requested for by the 2<sup>nd</sup> – 11<sup>th</sup> Respondents to enable him administer the estate of their late father.

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However, it is apparent from the submissions made for the Administrator General that the deceased is survived by adult children, who reported his death – Administration Cause 19811/16. There is also a widow of the deceased. The Administrator General allowed the family to convene a meeting for purposes of appointing a family member to be issued with Letters of Administration. In my view that is a good indication that the Administrator General has no

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objection to a chosen member of the family administering the estate. More so, there is a widow whose rights to administer the estate override that of the Administrator General.

5 I am therefore persuaded by the argument of the Administrator General that, this case is not one of those exceptional circumstances where it requires the Administrator General to intervene in the administration of the late Serunjogi.

10 And since it is not disputed that the Respondents have taken steps to administer the estate of late Serunjogi, the Administrator General cannot be forced to take up Administration.

The letter of no objection should be issued to the Respondent to enable anyone of them chosen in the family to complete the process of applying for Letters of Administration. Having an Administrator of the estate duly appointed will pave way for whatever action can be taken to resolve the issues regarding the estate of late Mukiibi.

15 The prayer No.1 of the Applicants is accordingly disallowed.

As to **whether this is a proper case to issue an injunction** is the next issue to be resolved.

20 I have noted from the application that, the Applicants are seeking appointment of an Administrator to estate of late Serunjogi to enable them dispose of the execution proceedings. At the same time they seek to have the beneficiaries to the estate of late Serunjogi evicted from the land arguing that the moment the Applicants got Letters of Administration they were entitled to vacant possession of the disputed land more so since their Letters of Administration have not  
25 been contested and have not been revoked. And that the beneficiaries of late John Mary Serunjogi do not have any locus in the estate of late Mukiibi and they should be forcefully evicted.

30 However, looking at Annexure YM<sub>3</sub>, the decree in Administration Cause 02/2010, where the Letters of Administration that had been issued to John Mary Serunjogi on 07.07.2002, were revoked and Letters of Administration were granted to the Applicants, only a permanent injunction was issued restraining the Defendant from undertaking any further dealing with the estate of late Joseph Mukiibi.

35 The letter of 29.09.14 to John Mary Serunjogi – YM<sub>4</sub> – he was required to remove any structures put on the disputed land; which he declined to do before his death.

40 The suit he filed against the Applicants Civil Suit 126/14 – YM<sub>5</sub> – the suit was dismissed with costs to the Applicants/then Defendants, but the issue of ownership of the land was not determined. There appears to have been no counter claim from the Applicants - The

Respondents have no Letters of Administration yet, although the process is under way and eviction cannot issue against them without an order of court to that effect.

5 And to proceed to evict them to give vacant possession in their individual capacities as beneficiaries to the estate of late Serunjogi, there has to be a court order to that effect. They were not parties to the dismissed suit filed by late Serunjogi and eviction cannot proceed against a dead person.

10 While they can be sued as beneficiaries, there is no such suit seeking to remove them from the estate they claim belonged to their late father Serunjogi, and to declare that they have no entitlements to remain on the suit land.

15 They are residents on the suit land and the Applicants claim that they are engaged in acts of alienation and wastage of the land that Applicants claim belongs to the estate of late Mukiibi.

In the circumstances, court can only exercise its discretion to issue an injunction barring the Respondents from alienating the suit land by way of sale or lease to pending the grant of Letters of Administration to the respondents thereby enabling the parties to take whatever action is necessary to determine the issue of ownership of the land. – S.33 Judicature Act.

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The application against the Administrator General to administer the estate of late Serunjogi is disallowed.

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The application is partly allowed for the reasons set out herein and the following orders are made:-

30 1. The Respondents are allowed to apply for Letters of Administration. They are directed to appear before the Administrator General in a period of not more than two (2) weeks from the date of this Ruling to choose people among themselves to apply for Letters for Administration to the estate of the late John Mary Serunjogi.

35 2. An injunction is hereby issued against the Respondents restraining them from alienating the disputed land at Maganjo by way of sale, lease, and the carrying on of construction pending the disposal of the application for Letters of Administration to the estate of the late John Mary Serunjogi and the disposal of proceedings under EMA No. 1087 of 2017 that are pending before this court against the estate of the late John Mary Serunjogi.

40 3. This order is to be served on the Registrar, the High Court of Uganda, Family Division.

Each party should bear its own costs of the application.

5 **Flavia Senoga Anglin**  
**JUDGE**  
**17.07.17**