THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

[FAMILY DIVISION]

MISCELLANEOUS APPLICATION NO. 330 OF 2023
(ARISING FROM CIVIL SUIT NO. 313 OF 2021)

1. FIONA KARAKIRE AKAMPA

2. LYNNA KARAKIRE ANKUNDA ::::::::::::::::::::::APPLICANTS

3. VIVIAN KARAKIRE MURUNGI

4. MARK KARAKIRE ASIIMWE
(Suing through Mark Enoth Kamanzi their Appointed Attorney)

VERSUS

EZRA KAGIRA :: RESPONDENT
(The Administrator of the Estate of the Late Monica Karakire)

RULING BEFORE: HON. LADY JUSTICE CELIA NAGAWA

1.0 Introduction.

1.1 The Applicants through their appointed attorney filed this application against the Respondent by Notice of Motion under Section 98 of the Civil Procedure Act, Cap. 71, Sections 14(2), 33 of the Judicature Act, Order 13 Rule 6 and Order 52 Rule 1 and 3 of the Civil Procedure Rules SI 71-1 seeking the following orders;

1. That judgment on admission be entered in favor of the applicants that the Respondent is the administrator of the estate of the late Monica Karakire having obtained the grant on 28th July, 1997.
2. That judgment on admission be entered in favor of the applicants that the respondent did not obtain a Certificate of No Objection and/or authority from the Administrator General or any

appointment by the family of the late Monica Karakire before applying for Letters of Administration.

3. That judgment on admission be entered in favour of the Applicant that the Respondent did not make a full and true inventory and did not render a true and correct account of the properties and credits of the estate in the prescribed time or at all.
4. That judgment on admission be entered in favor of the applicants that the Respondent has never distributed the estate of the late Monica Karakire to the rightful beneficiaries.
5. That judgment on admission be entered in favour of the Applicants that the Respondent sold the estate property comprised in LRV 842 Folio 5 Plot 347, Land at Nsambya.
6. That judgment on admission be entered in favour of the Applicants that the Respondent took over administration of the properties and monies listed herein.
7. Costs of the application be provided for.

1.2 The grounds of the application are summarized in the Notice of Motion and also set out in an affidavit sworn in support of the application by Mark E. Kamanzi the appointed Attorney of the applicants. Briefly, the grounds are that the late Monica Karakire died intestate on 13th March, 1997 and the Respondent obtained the Letters of Administration on 28th July, 1997 vide Mengo Chief Magistrate Court Administration Cause No. 165 of 1997. The applicants filed HCCS No. 313 of 2021 through Mark E. Kamanzi as their appointed attorney seeking for orders that the letters of administration be revoked and declarations made that the grant was fraudulently obtained.

1.3 The deponent further stated that the Respondent/1st Defendant filed a Written Statement of Defense in which he unequivocally admitted that he is the administrator of the estate of the Monica Karakire and listed the properties and monies of the estate he administered. He averred that the Respondent unequivocally admitted that he did not make a full and true inventory and did not render a true and correct account of the properties and credits of the estate in the Court within the prescribed time or at all. He stated that the estate was never distributed and prayed for costs.

1.4 The application was opposed by the Respondent through an affidavit in reply deposed to by Ezra Kagira, who stated that the applicants' affidavit is malicious and obnoxious seeking judgment not borne out of his defence and that the facts that he admitted in his defense do not entitle the applicants' judgment hence their application is a moot. He further stated that the burden is on the applicants to prove all material facts alleged by them in the plaint and this application is calculated to circumvent their burden of proof.

1.5 The deponent also averred that Mark E Kamanzi, the applicants' attorney secured Adoption Orders for the applicants nearly twenty (20) years ago and the adoption order still subsist and therefore the applicants have no locus following their adoption and have no cause of action against the respondent hence the application is an abuse of court and made in bad faith.

1.6 The Applicants filed an affidavit in rejoinder whose contents I have also taken into consideration.

2.0. Representation and Hearing

2.1. At the hearing of this application, the Applicants were represented by Mr. Kituuma-Magala of M/S Kituuma- Magala & Co. Advocates, Kampala while the Respondent was self-representing but his pleadings and submissions filed by Waymo Advocates, Kampala. It was agreed that the hearing proceeds by way of written submissions which were duly filed.

2.2. I have considered, perused the case law cited in support of both positions in determination of this application.

3.0. Burden of proof.

3.1. In all civil matters, he who alleges bears the burden to prove his/her case on a balance of probabilities. The plaintiffs in this matter bear the burden of proof as required under **Section 101,102 and 103 of the Evidence Act, Cap 6. Section 101 of the Evidence Act (supra)** is to the effect that; *"Whoever desires any Court to give judgment as to any legal right or liability, dependent on the existence of the facts which he or she asserts must prove that those facts exist".*

4.0. Preliminary Objection

4.1. Whereas the applicants raised a Preliminary Objection, the Respondent raised issues in his endeavor to have the application disposed of.

4.1.1. The Applicants objected to that fact that the Affidavit in reply was filed out of time and without leave of court.

4.1.2. The Respondent on the other hand raised several issues to dispose of the application; namely

i. Whether the applicants have locus standi?

ii. Whether the suit discloses a cause of action against the respondent?

iii. Whether the suit is time barred?

iv. Whether the respondent's affidavit in reply should be struck out?

v. Whether the applicants are entitled to judgment on admission?

4.2. **Determination of the Preliminary Objection.**

4.2.1. According to the affidavit of service and its annextures the Respondent was served through his both advocates on 31st March, 2023. This fact was not contested by the Respondent in his submissions. The affidavit in reply was filed on 19th May, 2023 and the respondent's submissions on 13th June, 2023.

4.2.2. Order 12 rule 3(2) of the Civil Procedure Rules SI 71-1 provides *that "service of an interlocutory application to the opposite party shall be made within fifteen (15) days from the filing of the application, and a reply to the application by the opposite party shall be filed within fifteen (15) days from the date of service of the application and be served on the applicant within fifteen (15) days from the date of filing of the reply".* In reference to the case of **Stop and See (U) Limited vs Tropical Africa Bank Limited, HC Miscellaneous Application No. 333 of 2010** wherein Justice Madrama (as he then was) held that a *"reply or defence to an application has to be filed within 15 days. Failure to file within 15 days would put a defence or affidavit in reply out of the time prescribed by the rules. Once a party is out of time, he or she needs to seek leave of court to file the defence or affidavit in reply outside the prescribed time."*

4.2.3. Filing an affidavit in reply out of time was procedurally flawed and cannot be cured by the extension of the rules of substantive justice. The affidavit in reply is hereby struck off the record.

5.0. <u>Court Determination of the application</u>

5.1. There being no affidavit in reply on court record this court will determination the application to ascertain whether it has any merit.

5.1.1. Upon filing their submissions, the Applicants did not raise any issue probably because they had a Preliminary objection which they thought will close their application.

5.1.2. This court will frame one issue for determination of this application. As provided by **Order 15 Rule 5** of the Civil Procedure Rules.

5.2. <u>Issue for Determination</u>

Issue No. 1- Whether the Applicants have locus standi to bring this application?

5.3. A beneficiary to an intestate estate has locus Standi to institute a suit to protect their interest, however in this application the applicants are no longer children of the late Monica Karakire, they are neither dependent relatives since their relationship was terminated upon the adoption order which has never been rescinded. Therefore at the time of instituting this application they were not children of the late Monica Karakire.

5.4. In the case of **Dima Dominic Poro Versus Inyani & Anor (Civil Appeal No. 17 of 2016)** Justice Stephen Musota *(as he then was)* held that; *'for any person to otherwise have locus Standi, such person must have sufficient interest in respect of a subject matter of a suit, which is constituted by having an adequate interest, not merely a technical one*

in the subject matter of the suit, the interest must not be too far remote, the interest must be actually not abstract or academic and the interest must be current, not hypothetical. The requirement if sufficient interest is an important safeguard to prevent having busy bodies in litigation with misguided or trivial complaints".

5.5. Once an adoption order is made, the adoptive couple (parent) acquire the full status of parenthood. They do not merely obtain parental responsibility but are considered by the law to be the child (ren)'s parents.

5.6. Losing parenthood will only come to an end if an adoption order is made or a parental order is awarded. In either of these cases the original parents (the parents at birth) cease to be the legal parents and the applicants take over as parents.

5.7. Section 51 of the Children Act, provides for the effects of an adoption order and therefore states that;

Upon an adoption order being made-

a) All rights, duties, obligations and liabilities if parents and guardians in relation to the future custody, maintenance and education of the child, including all rights to appoint a guardian and to consent or give notice of consent to marriage, are extinguished, and

b) There shall vest in, and be exercised by, and enforced against the adopter all such rights, duties, obligations and liabilities in relation to the future custody, maintenance and education of the child as would vest in him or her if the child were the natural child of the adopter born to him or her in lawful wedlock".

6.0. The effect of an adoption order means that an adopted child is to be treated as the 'legitimate child of the adopter or adopters". Meaning that the adoption order will have the following effects;

i. Parental responsibility for the child is given to the adopters.
ii. Adoptive parents can make all decisions about the child which other parents can make, including appointing a guardian.
iii. An adoption order extinguishes the parental status and parental responsibility of any other person.
iv. After the making of an adopting order an adopted child no longer has any right to inherit their birth parent's property.

6.1. The consequence is that the child (throughout his/her life) ceases to be a member of the original family and becomes an adopted person. The applicants according to the record were adopted on separate dates by the same adoptive parents on 17th August, 2004 Fiona Karakire Akampa, 17th February, 2005 Vivian Murungi Karakire and Lynna Karakire Ankunda and 31st August, 2004 Mark Asiimwe Karakire all by Dr. David Anthony Torr and Alice Maureen Kyomuhendo. I am not certain for the record does not reflect whether Dr. David Anthony Torr was a Ugandan Citizen by the time this petition for adoption was filed at the Chief Magistrate's Court at Mengo and Nakawa respectively.

6.2. Following the said adoption order the children now applicants all reallocated to Canada. They still reside in Canada and acquired Canadian Citizenship. This is not the problem. The issue to address is on locus standi and the Children Act avails court the answer.

6.3. Section 53 (3) of the Children Act, Cap 59 (as amended) provides that; *"for the avoidance of doubt, an adopted person shall not be entitled to inherit from or through his or her natural parents if they die intestate".*

6.4. In the absence of a Will, the estate is subjected to the rules of intestacy, it would be double standards for the applicants to benefit from their natural parents and at the same time benefit from the adoptive parents.

6.5. Upon the adoption order being granted the applicants forfeited their inheritance from their natural parents. The applicants have no interest in the estate. They therefore have no locus standi to bring any action against the respondent more so following the adoption order.

6.6. In light of the above findings, therefore, this application is devoid of merit and is accordingly dismissed along with the main suit, Civil Suit No. 313 of 2021 filed against the Respondent together with Lincoln Ndyanabangi and Nasecaah Peace Ndyanabangi.

7.0. <u>Conclusion.</u>

7.1. In the final result, the court decides as follows.

1. Miscellaneous Application No. 330 of 2023 is hereby dismissed.
2. Civil Suit No. 313 of 2021 stands dismissed.
3. Costs awarded to the Respondent.

I so order.

Dated, signed and delivered by email this 13th day of December, 2023.

CELIA NAGAWA
JUDGE