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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA
(FAMILY DIVISION)

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ORIGINATING SUMMONS NO. 20 OF 2023
(ARISING FROM ADMINISTRATION CAUSE NO. 584 OF 2015)

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1. NALUKWAGO AISHA }
2. NANKOLOTO SARAH } PLAINTIFFS
3. NAKABUGO MABLE }

(Administrators and Beneficiaries of the Estate of the Late Ssentogo William Salongo)

-VS-

NSALE KENNETH SENTONGO DEFENDANT
(Administrator of the Estate of the late Ssentogo William Salongo)

Before: LADY JUSTICE DR. CHRISTINE A. ECHOOKIT

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JUDGEMENT

BACKGROUND:

These Originating Summons are brought for the determination of the following questions;

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1. Whether or not the Defendant is genuinely interested and capable to execute the functions of an administrator in accordance with the mandate of the Letters of Administration and the law as required of the administrator under the Succession Act in Uganda.

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2. Whether the Defendant objects to the cancellation of the letters of administration granted to him by this court and have the Plaintiff administer the estate.

The suit is brought under Order 37 rule 1(g) and 8 of the Civil Procedure Rules. It is supported by the affidavit of Nalukwago Aisha the Plaintiff. The Defendant swore an affidavit in reply. The Plaintiff swore a rejoinder affidavit intending to raise a preliminary objection; and that she has never filed any suit which is frivolous, vexatious or otherwise as alleged by the Defendant.

5 **REPRESENTATION AND HEARING:**

The Plaintiffs were represented by counsel Kiribwa Simon Peter. The Defendant was represented by counsel Mayanja Daniel. The parties filed written submissions.

ISSUES FOR THE DETERMINATION OF THIS COURT:

- 10 1. Whether the 2nd and 3rd Plaintiffs gave instructions to file this suit.
2. Whether the plaintiffs' suit is properly brought by way of Originating Summons.

DETERMINATION OF THE ISSUES BY THIS COURT:

15 The Plaintiff in her rejoinder intended to raise a preliminary objection to the effect that the Defendant's affidavit in reply is improperly before court, is tainted with falsehoods and should be expunged. However, no rejoinder submissions were filed in the timeframe given for doing so. Hence, the said preliminary objection will not be considered.

Issue 1: Whether the 2nd and 3rd Plaintiffs gave instructions to file this suit.

20 Counsel for the Defendant raised a preliminary objection to the effect that the 2nd and 3rd Plaintiffs did not give counsel for the Plaintiffs instruction to file this suit. He prayed that their affidavits in support of the suit be struck out. Defence counsel prayed for and was granted leave to cross examine the 2nd and 3rd Plaintiffs on this issue.

25 During cross examination, the 2nd Plaintiff stated that the Defendant is her father and the 1st Plaintiff is her aunt. She denied knowing the firm of M/s Wanda, Sakwa & Co. Advocates, the lawyers of the 1st Plaintiff. She also denied knowing the commissioner of oaths called Bamulutira Edward and said she has never appeared before him. She also stated that the signature on the affidavit claimed to be sworn by her is not hers, and proceeded to deny that
30 she agreed with the 1st Plaintiff to file this suit.

- 5 When cross examined, the 3rd Plaintiff stated that the 1st Plaintiff her elder sister informed her she was going to see a lawyer regarding the estate of the late Ssentogo William Salongo. However, she denied giving instructions to any lawyer to file this suit and denied having signed and deponed the affidavit in support of the suit.
- 10 Accordingly, this court found that it is clear from the cross examination that the 2nd and 3rd Plaintiffs did not give their consent to the filing of the suit nor did they instruct M/s Wanda, Sakwa and Co. Advocates in that regard. Accordingly, the 2nd and 3rd Plaintiffs were struck off the suit and the 1st Plaintiff allowed to proceed alone as prayed by her counsel.
- 5 In the premises, the aspects of the parties' affidavits relating to the expunged 2nd and 3rd Plaintiffs are ignored in the resolution of the legal questions before court.

Issue 2: Whether the plaintiffs' suit is properly brought by way of Originating Summons.

- 20 Originating summons are a suit in their own right under Order 37 rule 9, distinguished from ordinary suits by the placement of the letters "OS". Originating Summons as indicated in Order 37 rule 8 and Appendix B Form 13 has a Plaintiff and a Defendant. By default, therefore, it is expected that originating summons are inter parte, although there are instances where they may be ex parte.

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- The question at this point is whether originating summons is the right procedure to handle the instant case. The Hon. Justice Stephen Mubiru in the case of Guaranty Trust Bank Uganda Limited vs. Dokwals Uganda Limited & Anor Civil Suit No. 0001 of 2021 at the Commercial Division of the High Court ruled that a suit commences by way of originating summons where
- 30 the dispute concerns matters of law, and there is unlikely to be any substantial dispute of fact. He also stated that the procedure exists in the interest of efficiency and cost; and that it provides a simple, informal, expeditious and inexpensive method of obtaining a final judgment, where no oral evidence is required, and the proceedings can be determined by way of affidavit

5 evidence. He observed that an originating summons is the appropriate procedure where the main point at issue is one of construction of a document or statute or is one of pure law. It is not appropriate where there is likely to be any substantial dispute of facts that the justice of the case would demand the settling of pleadings.

10 Whereas questions 1 of the instant case seems to be requiring a straight forward answer, it actually calls for evidence to show whether or not the Defendant is genuinely interested and capable of executing the functions of an administrator to the estate of the late Ssentogo William Salongo. The Plaintiff states in her affidavit in support of the suit that ever since the grant of letters of administration, the Defendant has not allowed other administrators to administer the

5 estate and is not interested and willing to undertake the obligations of an administrator. The Defendant on his part states in his affidavit in reply that he is willing to cooperate with the other administrators to lawfully administer the estate distributed in the deceased's last Will, which Will has never been challenged by the other administrators. The Plaintiff in her affidavit in rejoinder is, however, quick to rebut that the deceased left a Will. It is her averment that the deceased

20 died intestate.

I have perused Administration Cause No. 584 of 2015 under which the Letters of Administration were issued. I note that the Plaintiff and the Defendant were joint petitioners for Letters of Administration to the estate of the late Ssentogo William, together with a one

25 Nankoloto Sarah (granddaughter to the deceased). The amended petition clearly states that the deceased died intestate on 26th day of June 1990. It is the basis of that petition that Letters of Administration were granted on the 26th day of February 2016 to the petitioners. It is, therefore, quite uncouth that the Defendant will choose at this time in the Originating Summons to boldly state that the deceased left a Will which was not contested by the other

30 administrators. Had that been the case, the petition for Letters of Administration ought to have stated so, and court would have issued "Letters of Administration with a Will annexed."

- 5 That notwithstanding, should the Defendant wish to contest the letters of administration granted, the right procedure is not by way of originating summons but ordinary suit. Hence, the law and precedents cited by the Defendant in that regard are not useful in the determination of the present suit.
- 10 Question 2 also seems to be a straight forward question which can easily be resolved by way of originating summons if supported by facts and evidence. In her affidavit in support of the suit, the Plaintiff avers that she is one of the administrators of the estate of the late Ssentogo William Salongo for which letters of administration were granted on the 26th day of February 2016 vide Administration Cause No. 584 of 2015; and that the Defendant has threatened that
- 15 the estate will never be shared unless the other administrators relinquish the responsibility off him. In his affidavit in reply, however, the Defendant takes himself as a proper administrator of the estate of the late Ssentogo William Salongo. He goes on to claim that it is the Plaintiff who has never intended to administer the estate, rather she wants to sell it and benefit herself in total disregard of other beneficiaries and the deceased/s Will; and that the Plaintiff has
- 20 misused the letters of administration to the estate without his consent or approval, to claim that the deceased left other properties whereas not.

In my opinion, therefore, whereas it is easy from the above to deduce that the Defendant objects to the cancellation of letters of administration and that he objects to the Plaintiff administering the estate, this response does not ultimately finally settle the dispute before the parties. Indeed, it is the Plaintiff's claim that the Defendant has been solely benefiting from the estate land comprised in Block 11 Plot 512 at Kabowa. On his part, the Defendant claims that in total disagreement with her co-administrators, the Plaintiff instituted Civil Suit No. 004 of 2021 in the Chief Magistrate's Court of Kalangala at Kalangala against family members; and

30 that the Plaintiff in the said suit is claiming a kibanja interest at Buligo LC1 Kalangala District as part of the properties left by the deceased. It is obvious to me that these disputes between

4 the parties can only be resolved by way of an ordinary suit.

5 In view of the above, it is quite premature to conclude that Letters of Administration should be cancelled and that a new grant be given to the Plaintiff; or that the Letters of Administration should be revoked and Letters of Administration with a Will annexed be granted to the Defendant and Nankoloto Sarah. Due process must take place for matters in contention to be proved by evidence, to enable a just decision to be made. This can only be done by way of
10 ordinary suit.

CONCLUSION:

For reasons above;

- a) The Originating Summons fails.
- b) The Plaintiffs may institute an ordinary suit for the determination of any dispute between the parties.
- c) Each party shall bear their own costs.

I so order.

Dated at Kampala this... 15th day of February 2024.



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Dr. Christine A. Echokit
Judge.

Right of appeal explained.