

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT MBALE**

**HCT-04-CV-MA-0062-2010
(From original Pallisa Civil Suit No. 54 of 2003)**

ERIZEFANI WAIRA.....APPLICANT

VERSUS

1. CLEMENT OKALANG

2. JAMES OLINGA.....RESPONDENTS

BEFORE: THE HON. MR. JUSTICE STEPHEN MUSOTA

RULING

When this application came before me for hearing **Mr. Anukur** on brief for **Biron Francis** for the 1st respondent drew my attention to a number of legal flaws in this application that:

- (i) The first respondent **Clement Okalang** is since deceased and therefore this application cannot be sustained against him.
- (ii) The application is not supported by a summary of evidence, list of authorities and list of documents thus violating the CPR.

That the application is therefore a nullity and a waste of court's time which should be dismissed with costs.

When I inquired from the applicant who was in court in person, he acknowledged that indeed the 1st respondent died long ago (3 or 4 years ago).

I will agree with learned counsel for the 1st respondent that since the 1st respondent is dead then under O.24 r. 4 CPR where one of two defendants dies and the cause of action does not survive or continue against the surviving defendant or defendants alone, or a sole defendant or sole defendant dies and cause of action survives or continues, the court, on an application made for that purpose, shall cause the legal representative of the deceased defendant to be made party and shall be made to proceed with the suit. If an application is not made to that effect the suit abates against the deceased defendant. In the instant case since the 1st respondent died over 3 years ago and no application to substitute him was made then this application abates against him.

Secondly I agree with learned counsel for the 1st respondent that O.6 r. 2 CPR was not complied with when this application was filed. It is provided that every pleading shall be accompanied by a brief summary of the evidence to be adduced, a list of witnesses, a list of documents and a list of authorities to be relied on, except that an additional list of authorities may be provided later with leave of court. By filing this application in violation of the above mandatory requirements, the applicant flouted this law and he cannot be allowed to go away with it.

The notice of motion will be struck out with costs.

I so order.

Stephen Musota

JUDGE

22.2.2012

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Magirigi on brief for **Musiiho** for the applicant.

Respondent absent.

Kanagwa Interpreter.

Magirigi: For Ruling.

Court: Ruling delivered.

Stephen Musota

JUDGE

22.2.2012