

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MASINDI
MISCELLANEOUS APPLICATION NO. 0116 OF 2022
(ARISING FROM CIVIL SUIT NO. 0016 OF 2016)

5

1. MUCUNGUZI EDGAR
2. MUTEGYEKI ANDREW

(Beneficiaries of the Estate of the Late Paddy Ahimbisibwe) APPLICANTS

VERSUS

10

1. ATUKUNDA BRENDA
(Administrator of the Estate of the Late Paddy Ahimbisibwe)
2. MUHANGUZI KATAGUZA ALFREDRESPONDENTS

15

BEFORE: Hon. Justice Isah Serunkuma

RULING

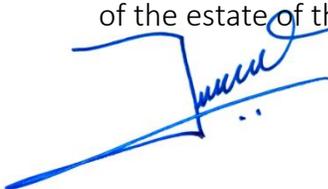
20 **Background:**

This is an application brought by Notice of Motion under **Order 1 rule 13 of the Civil Procedure Rules SI 71-1, Section 98 of the Civil Procedure Act Cap 71** for joinder of the Applicants as Defendants in the main suit referenced above and thus sought orders that;

- a. The Applicants be joined/added as Defendants and Counter Claimants in Civil Suit No. 0016 of 2016.
- b. Costs be provided for.

The grounds for the application are set out in the Notice of Motion and the affidavit sworn by Mr. Mucunguzi Edgar on behalf of the applicants and they briefly are;

- a. The applicants are children of the Late Paddy Ahimbisibwe who was the rightful owner of the property comprised in LRV 3164 Folio 20 Plot 3 Eric Kirya Road Masindi District.
- b. The 1st Respondent is their mother and Administrator of the estate of their late father.
- c. The 2nd Responded instituted a suit vide **Civil Suit No. 0016 of 2016 Muhanguzi Kataguza Alfred v. Atukunda Brenda** against the 1st Respondent in her capacity as Administrator of the estate of the Late Paddy Ahimbisibwe.



- d. By the said suit, the 2nd Respondent prays among others, that she vacates the caveat that she lodged on the suit land, which forms part of the Estate of the Late Paddy Ahimbisibwe and to which the applicants are beneficiaries.
- e. The 2nd Respondent transferred the suit property into his names fraudulently and illegally and got registered on the Certificate of Title as an administrator of the Estate of the Late Paddy Ahimbisibwe.
- f. The Applicants seek to be joined to the main suit as Co - Defendants and to the Counterclaim as Co - Plaintiffs because they have a direct interest in the matter and will directly be affected by the outcomes of the main suit.
- g. The joining of the Applicants as Defendants and Counter - claimants will avoid multiplicity of suits and help in resolving the dispute at hand conclusively.

In the affidavit in reply sworn by the 2nd Respondent, he deponed that;

- a. He sued the 1st Respondent for illegally lodging a caveat on the suit land which he lawfully purchased from her as the administrator of her late husband's estate.
- b. That he is not claiming a right in the suit property as an administrator of the Estate of the Late Paddy Ahimbisibwe but as a lawful purchaser of the property.
- c. The estate of the Late Paddy Ahimbisibwe has an administrator, who is the 1st Respondent and therefore, the Applicants cannot be added to the suit on behalf of an estate that already has an Administrator.
- d. That the application is frivolous, vexatious, an abuse of court process and intended to be a delaying tactic to the determination of the main suit.

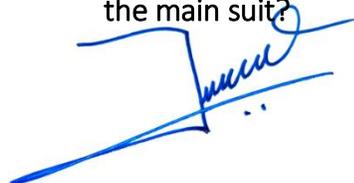
Representation:

The Applicants were represented by **M/s Kimanje Nsibambi Advocates** while the 2nd Respondent was represented by **M/s Kasangaki & Co. Advocates**. The 1st Respondent did not have any representation at the suit.

Ruling

The Applicants are applying to be joined as parties to a suit by which the 2nd Respondent sued their mother and administrator of the estate of the Late Paddy Ahimbisibwe for lodging a caveat on the suit land, which the 2nd Respondent alleges that he bought from her. There was only one issue raised in the application namely:

Whether the Applicants can be joined as Co- Defendants and Counter complainants in the main suit?



Counsel for the applicant submitted that it was in the interest of justice to add the applicants as co- defendants and counter-claimants in the main suit and that their application fell within the ambit of **Order 1 rule 10 (2) of the Civil Procedure Rules**. It was submitted that the main purpose of joining parties is to enable court deal with matters brought before it effectively, be able to settle all questions included in the suit and to avoid multiplicity of suits. The applicants have an interest in the main suit and the orders therein will affect their interests as beneficiaries of their late father's estate.

While referring to **Departed Asians Custodian Board v. Jaffer Brothers Limited [1999] LE. A 55**, counsel submitted that it is necessary to show that the interests of the particular party would be affected by the orders accruing from the suit they seek to be joined to and it is desirable to avoid multiplicity of suits or that the defence could not effectually be set up unless that person was joined or an order made to bind the person.

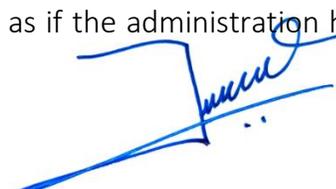
It was further submitted that if the caveat lodged by their mother is vacated, it would give leeway to the 2nd Respondent to continue intermeddling with their late Father's estate to which the applicants are entitled as beneficiaries and they would lodge another caveat and this would result into multiplicity of suits being filed by the 2nd respondent to vacate them.

Counsel also submitted that **Order 1 rule 10(2) of the Civil Procedure Rules** provides for addition of parties where court orders have the consequences or the effects of prejudicing or affecting the interests of those parties. For this they relied on the case of **Ruzindana Senyonga Andrew v. Mash Investments; CACA No. 0093 of 2014**.

Regarding locus standi, counsel for the applicants submitted that the applicants, being legal beneficiaries of the estate of late Paddy Ahimbisibwe have legal capacity to sue in order to protect their interest in the estate. They relied on the authority of **Israel Kabwa v. Martin Banoba Musiga; Civil Appeal No. 0052 of 1995**.

In response, the 2nd respondent's counsel submitted that **Order 1 rule 13** of the **Civil Procedure Rules** on which the applicants had relied in bringing the application provides for the application to add, strike out or substitute the plaintiff or defendant of the suit. They submitted on the character of an executor or administrator as follows;

Section 180 of the Succession Act Cap 162 provides that the executor or administrator of a deceased is his or her legal representative for all purposes, and all property of the deceased person vests in him or her as such. Section 192 of the Succession Act provides that letters of administration entitle the administrator to all rights belonging to the intestate as effectually as if the administration has been granted at the time of his or her death. They relied on the



case of Fakruddin **Vallibhai Kapasi & Fazle Husein Kapasi vs. Kampala District Land Board & Alliance Holdings Limited**; Civil Suit No. 0570 of 2015.

5 They further submitted that the right of a beneficiary to sue only applies to protect their interest before obtaining letters of Administration. They referred to Sarah Natolo (Suing as Administratrix & beneficiary of the estate of Late Irene Drucillar Namaganda) versus Nsubuga Francis & Ors.; C.S No. 0412 of 2018. Based on this, the administrator covers the beneficiaries and therefore this application is misconceived.

10 It should be noted that the application was brought under **Order 1 rule 13 of the Civil Procedure Rules** which refers to an application to add, strike or substitute a plaintiff or defendant. The respondents instead referred to **Order 1 rule 10 (2)** in their affidavit in reply which is in respect to parties that are improperly added to the suit. However, this slip shall be ignored as it was neither noticed nor highlighted by the applicants. It also did not go to the root of their pleadings and therefore it is not fatal as to result into rejecting of the said pleadings. (See: **Comfoam Ltd v. Megha Industries (U) Limited; HCMA 1084 OF 2014**).

15 **Order 1 rule 13 of the Civil Procedure Rules** provides that;

“Any application to add or strike out or substitute a Plaintiff or Defendant may be made to the court at any time before trial by motion or summons or at the trial of the suit in a summary manner.”

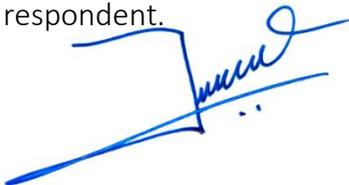
20 As was held in **Yahaya Kariisa v. Attorney General & Anor; SCCA No. 007 of 1994 [1997] HCB 29**, the power to add or strike off a party to pleadings lies within the discretion of court which must however be exercised judiciously based on sound principles.

The considerations for this as has been rightly submitted by the applicants were set out in the case of **Departed Asians Property Custodian Board v. Jaffer Brothers Limited (1999) E.A 55** which provides that it is necessary to show either that;

25 a. The orders sought would legally affect the interest of that person and it is desirable to have that person joined to avoid multiplicity of suits; OR

b. That the Defendant could not effectually set up a desired defence unless that person was joined or an order made that would bind that person.

30 The applicants have based their application on the first consideration in respect to having an interest in the matter as beneficiaries of the estate of the Late Paddy Ahimbisibwe and in the need to avoid multiplicity of suits. Their interest, though disputed, has not been denied by the respondent.



However, the respondent contends that given that the 1st respondent has letters of administration to the estate of her late husband, it is she that has legal capacity to protect all the interests and issues relating to the said estate and accordingly, the applicants do not have the necessary locus standi to be added to the matter in the presence of an administrator.

5 It is trite as has been submitted by the 2nd respondent that the administrator has the legal capacity and mandate in respect of all matters relating to the estate where the said administrator has been granted letters of administration including capacity to sue and be sued and therefore in light of this, it is relevant to establish whether the applicants also have locus standi.

10 The term “Locus standi” is defined in **Kithende Appolonia & 2 Ors v Eleanor Wismer; CACA No. 0034 of 2010** as,

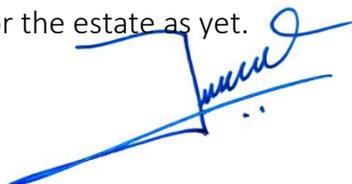
“The right that one has to be heard in a court of law or other appropriate proceedings. Once one has a direct interest in the matter, then one is eligible to claim relief respecting that matter if that one’s interest is being adversely affected.”

15 In the case of **Israel Kabwa v. Martin Banoba Musiga; SCCA 0052/ 1995 reported in [1996] 11 KARL at page 109-120**, the court held therein that a beneficiary of the estate of an intestate has locus to sue in his own name to protect the estate of the intestate for his own benefit, without having to obtain letters of administration. In the said case, court recognized the right of beneficiaries to protect their interest in the deceased’s estate.

20 In another case of **Serufusa Ronald v. Zirimenya Jimmy, Mary Francis Wasswa and Registrar of Titles; Civil Appeal No. 0016 of 2013**, the court therein also addressed the issue of locus standi of a beneficiary. While agreeing with the rest of the panel that beneficiaries have locus standi in so far as they have an interest in protecting an estate, Cheborion Barishaki JA stated that;

25 *“.....The beneficiary of an estate as prescribed under Section 27 of the Succession Act does have locus standi to institute legal proceedings for the purpose of protecting or preserving an estate. Beneficiaries of an estate of a male intestate include lineal descendants of the intestate. “*

The Court of Appeal in the above case held that the law is clear that a son as a beneficiary can sue and that the appellant need not have proved that he had letters of administration or was the heir in order to sue. For as long as it is not disputed that the beneficiary is a son of the deceased, they have the right to sue to protect their interest in the estate. However, this case is distinguishable from the current case as in the said case, no one had been granted the letters of administration for the estate as yet.



In consideration of the above, I am of the opinion that the beneficiaries of the estate of the Late Paddy Ahimbisibwe have the right to appear in their personal capacity for purposes of protecting their interest in their father's estate. This application, therefore, succeeds and it hereby granted.

5 Costs shall be determined at the conclusion of the suit.

I so rule.

Dated and delivered on this 27th day of October 2023.

10



.....
Isah Serunkuma
JUDGE