

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT FORT PORTAL

MISC. APPLICATION NO. 002 OF 2024

(ARISING FROM HCT – 01 – CV – CS -0022 OF 2012)

(ORISIGNATING FROM CIVIL APPEAL NO. 002 OF 2013)

ADOLF MUGANGA MBAIJANA ::::::::::::::::::::::::::::::::::: APPLICANT

(The Eexecutor of the Estate of the Late Edward Mbaijana)

VERSUS

EMMANUEL BASALIZA ::::::::::::::::::::::::::::::::::: RESPONDENT

BEFORE: HON. JUSTICE VINCENT WAGONA


RULING

The applicant brought this application under Section 98 of the Civil Procedure Act and Order 24 rules 4, 10 ad 12 of the Civil Procedure Rules for orders that:

- 1. Adolf Muganga Mbaijna be substituted for the deceased Edward Mboijana in HCT – 01 – CV – CS -002 OF 2012 and HCT – 01 – CV – CA NO. 002 of 2013.**
- 2. That the costs of taking out the application be provided.**

The application was supported by the affidavit deponed by the applicant who stated as follows:

1. That the Respondent instituted Civil Suit No. 022 of 2012 against the late Edward Mbaijana and court dismissed it with costs to the late Edward



Mboajana who died before execution of the same. That the Respondent filed Civil Appeal No. 0002 of 2013 in this Court against the late Edward Mbainaja and the same was dismissed with costs and the late Edward Mboijana had died before execution of the same.

2. That after the death of Edward Mbaijana, the applicant applied for and was granted probate on 13th October 2020 in HCT – 01 – FD – AC – 008 of 2018 to administer the estate. That it is just, fair and equitable that this application is granted so that he is substituted in the place of the late.

The application was served upon Respondent per the affidavit of service deposed by Mr. Mwirumubi Godfrey. Since service of the motion upon the Respondent on 23rd February 2024, the Respondent did not file an affidavit in reply or offer an explanation as to why he was not able to file his reply in time. I shall thus consider thus consider this application exparte.

Issues:

Whether the applicant should be substituted as a party to Civil Suit No. 022 of 2012 and Civil Appeal No. 002 of 2013 to replace the late Edward Mbaijana.

DECISION:

Order 24 rule 3 (1) of the Civil Procedure Rules provides that:

Where one of two or more plaintiffs dies and the cause of action does not survive or continue to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the cause of action survives or continues, the court, on an application made for that purpose, shall cause

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the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit.

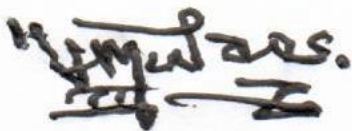
Order 24 rule 4(1) & (2) adds thus:

(1) Where one of two or more 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 surviving defendant dies and the 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 a party and shall proceed with the suit.

(2) Any person so made a party may make any defence appropriate to his or her character as legal representative of the deceased defendant.

Rule 24 (3) & (4) (1) allows a legal representative of a deceased plaintiff or defendant to replace and be made party to such a suit. The application for substitution is made by any interested person or Court's own motion can order that a legal representative be substituted. (See: *Amrit Goyal v Hari Chand Goyal & 3 others, Court of Appeal Civil Application No. 109 of 2004*).

In the present suit, the applicant was appointed as an executor of the estate of the late Edward Mбайана Апули by Justice Elizabeth Jane Alividza on 13th October 2020. Section 186 of the Succession Act is to the effect that once probate is granted, it renders valid all acts done by the executor. In this case the applicant was appointed as an executor of the deceased who upon securing a grant stepped into the shoes of the late Edward Mбайана Апули. Therefore since execution in Civil Suit No. 022 of 2012 and Civil Appeal 002 of 2013 cannot proceed without the late being



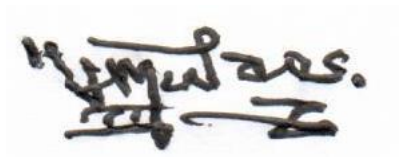
substituted, I find it in the interests of justice to allow this application and order the applicant to be admitted as a party and replace the late.

I therefore allow this application with the following orders;

1. That the applicant be and is hereby added as a party to Civil Suit No. 022 of 2012 and Civil Appeal 002 of 2013 and Edward Mbainjana (deceased) is hereby replaced by the applicant in both suits. The necessary changes should accordingly be made in the pleadings.

2. The costs of this application shall be borne by the applicant.

I so order.



Vincent Wagana

High Court Judge

FORTPORTAL

Date: 27/03/2024

