

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT FORT PORTAL
MISC. APPLICATION NO. 056 OF 2023
(ARISING FROM HCT – 01 – CV – CA – 001 OF 2007)

5 **AGABA ACLEO ::: APPELLANT**
(Suing as an Administrator of the Estate of the late Agaba Selevasta)

VERSUS

KABAGENYI JANE ROSE ::: RESPONDENT

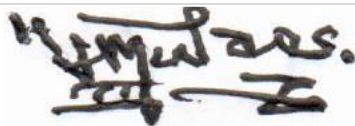
BEFORE: HON. JUSTICE VINCENT WAGONA

10 **RULING**

The applicant brought this application for an order setting aside the dismissal of Civil Suit No. 001 of 2007 and for the suit to be reinstated and heard on merits. The applicant also prayed for costs of taking out the application.

15 It was averred by the applicant that Civil Appeal No. 001 of 2007 was dismissed for want of prosecution in 2012. That when the suit come up for hearing, he was absent as he had been convicted on criminal charges and sentenced to life imprisonment in HCT – 01 – CR – SC – 00061 OF 2008.

20 That after 10 years in prison, he was released by the Court of Appeal that sat at Fort-portal in 2018. After his release, he contacted the firm of M/s Rwabwogo & Co. Advocates that misled him that the available remedy was to file a fresh suit and not an application for re-instatement.



That in 2019 and 2020, there was COVID-19 that stopped him from following up on the matter and when he engaged the current advocates of Ngaruye Ruhindi, Spencer & Co. Advocates, they advised him to file an application to have the appeal re-instituted. That if the application is not allowed, it shall cause gross injustice to him.

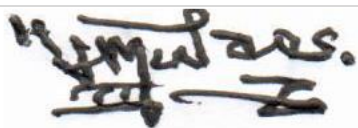
5 He prayed that the application is allowed to ensure the ends of justice.

Mr. Bwiruka informed court through a letter dated 15th/12/2023 and in court on 18th March 2024, acting on behalf of Asimwe Godfrey, Rwakyaka Patrick, Nkwenge Veneranda and Kabahweza Consolata that the Respondent died and this fact was known to the applicant before filing this application. He attached a copy of the death
10 certificate dated 19th April 2023 issued by the National Identification and Registration Authority (NIRA) where it is indicated that the deceased Kabagenyi Jone Rose died on 13th November 2006. He informed court that the application had been filed against a deceased person.

DECISION:

15 It is a settled principle of law that a suit against a deceased person is not maintainable in the Court of law. This was emphasized in *BabubhaiDhanji Pathak v. ZainabMrekwe [1964] E.A. 24* that a case filed against a dead person is a nullity and of no legal consequence. This is hinged on the firm principle that a suit cannot be maintained against a none-existent entity. Therefore no suit can be maintained
20 against a deceased person.

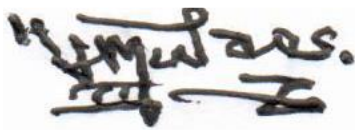
However, where a person dies during the course of the proceedings, the suit survives as against the legal representative of such person. Where a person died during the currency of a suit, it automatically abates as against the person who died. (See:



Abdala v Agony (Miscellaneous Civil Application No. 0067 of 2016) [2017]
UGHCFD 3 (2 March 2017).

Thadani, J in the Indian case of Municipal Corporation of Karachi V. BaradioJumoo Mughal, AIR(33) 1946 Sind 23, put it this way: “I have
5 *no difficulty in coming to the conclusion that where a suit has been filed against a dead man, the Court is powerless to act under any of the provisions of the Civil Procedure Code, in order to dispose of it according to law, because no rights exist against a dead person, but if they survive, they come to exist in the legal representatives who alone can sue or be sued.*”

10 In this case the applicant filed an application for re-instatement of Civil Appeal No. 01 of 2007 against Kabagenyi Jane Rose who was already deceased. I find the application bad in law. I thus strike it out with no orders as to costs. I so order.



15 Vincent Wagana
High Court Judge
FORTPORTAL

DATE: 27/03/2024

