

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT TORORO
MISC. APPLICATION NO. 23 OF 2023
ARISING OUT OF CIVIL SUIT NO. 53 OF 2010

BETTY PERUSI OLESI BUCHUNJU.....**APPLICANT**
(Administrator of the Estate of the late Benjamin Buchunju)
VERSUS

1. WANJALA MANUEL
2. SIFUNA PATRICK.....
RESPONDENTS

RULING

BEFORE: HON. DR. JUSTICE HENRY I KAWESA

This application was brought by way of notice of motion under **Section 33 of the Judicature Act Cap.13; Section 82 and 98 of the Civil Procedure Act Cap.71; and O.9 rr12 & 29 and O.52 rrl, 2, & 3 of the Civil Procedure Rules s.1 71-1**. It seeks orders that:

- 1, The judgment and decree entered against the late Benjamin Buchunju be reviewed and set aside.
2. The consequential orders arising and/or deriving from the said judgment and decree be set aside.
3. A declaration that the proceedings, judgment, decree and all consequential proceedings and orders vide Civil Suit No.053 of 2010 are a nullity.
4. The execution of the judgment and decree vide Civil Suit No.053 of 2010 be stayed.
5. Costs be provided for.

The application is supported by the affidavit deposed to by the Applicant; and is opposed through the affidavit in reply deposed to by Wanjala Manuel.

Representation

The Applicant is represented by M/S Luganda, Ojok & Co. Advocates; and the 1st Respondent is represented by M/S Ives Advocates. The 2nd Respondent did not enter appearance, and is thus not represented. The application shall proceed ex parte against him.

Counsel for the parties to on record filed written submissions, which shall be considered in determining the application.

In their respective submissions, Counsel for the parties raised preliminary application. The Court shall commence with the preliminary objection raised by Counsel for the 1st Respondent, since it might have the effect of disposing of the application.

Counsel for the 1st Respondent's preliminary objection is 'to the effect that the Applicant does not have *locus* to file this application. Counsel's submission is based on **O.24 R.4 of the Civil Procedure Rules** which provides for a procedure to be taken when a legal representative of a deceased defendant is desirous to be a party to a proceeding, thus;

Where a sole defendant dies and the cause of action survives or continues, the Court on application made for that purpose, shall cause the legal representative of deceased defendant to be made a party and shall proceed with the suit,

Counsel for the 1st Respondent argued that the import of the above legal provision is that before an application of this nature is filed in Court, the Applicant in order to have *locus* or be made a party to a suit should first obtain leave of Court by filing a formal application. That the failure by the Applicant to obtain an order of Court through an application to make her a party to Civil Suit No.53 of 2010 renders the Applicant without locus to bring this application.

Counsel for the Applicant did not file any submissions in reply to the preliminary objection.

Resolution

The Applicant brings this application in the capacity of an administrator of the late Benjamin Buchunju; and swears the affidavit in support thereof in that capacity. It is a fact that Benjamin Buchunju is a defendant to Civil Suit No.053 of 2010, whose judgment and decree the Applicant seeks to be reviewed. It is a fact that the defendant died, and that no leave has ever been sought to substitute him with the Applicant.

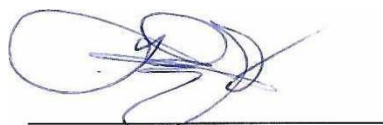
The provisions of **O.24 R.4 of the Civil Procedure Rules** as reproduced above envisage that in the circumstances, the Applicant ought to have sought for leave to be made a party to Civil Suit No.053 and all proceedings arising thereunder as a first step. The Applicant's Counsel is expected to have known this.

The Applicant having not sought for the said leave, the Court agrees with Counsel for the 1st Respondent that the Applicant lacks *locus* to bring this application. Thus, the preliminary objection is sustained. Consequently, the application is dismissed.

The costs shall be paid by Counsel in personal conduct of the application. This is for the reason that the dismissal has been occasioned by his lack of care in representing the Applicant.

I so order.

Delivered at Tororo this.....^{20th}..... Day of ^{Ma}..... 2024



HON JUDGE

In the presence of:

CSI Ochen Francis Xambo for
the respondent.

Respondent's present.

Applicant present

CSI for the applicant absent -
(sick).

OSI clerk.

CSI for the respondent:

This matter is coming up for
ruling and we are ready
to receive the ruling.

Sgd:

Edimu Hellen

AG. ASST. REGISTRAR

20/03/2024