

**KALIISA DAVID:..... APPLICANT**  
**VERSUS**

## 2.KARUNGI IRUMBA HARRIET::RESPONDENTS

***Before: Hon. Justice Byaruhanga Jesse Rugyema***

## RULING

[1] The Application is brought under **S.33 of the Judicature Act, S.98 CPA and O.52 rr.2 & 3 CPR** for a declaration that the main suit, **HCCS No.60 of 2023** is improperly before court and an abuse of court process and therefore ought to accordingly be dismissed with costs. The Application was supported by the affidavit of counsel for the Applicant and opposed by the affidavit in reply of the 1<sup>st</sup> Respondent herein.

## Background

[2] The parties herein are children of the late **Kaliisa Stephen** and the late **Florence Kaliisa**. Initially the Respondents obtained letters of Administration from the Chief Magistrates court of Hoima Vide **Administration Cause No. 24 of 2022** granted on **March 18, 2022**. The Applicant on 22/9/2023 filed **Civil Suit No. 17 of 2022 in the Chief Magistrates Court of Hoima (*Kaliisa David v Kaahwa Martin Isaac & Irumba Harriet Karungi*)** seeking revocation of the grant issued to the Respondents which is pending disposal. The Applicant also filed Hoima Chief Magistrates Court, **Miscellaneous Application No. 15 of 2022 (*Kaliisa David v Kaahwa Martin Isaac & Irumba Harriet Karungi*)** in which Her Worship Winnie Nankya Jakito Magistrate Grade I on **August 24, 2022** granted a temporary injunction restraining the Respondents from dealing in the estate **and ordered them to surrender the Letters of Administration back to court until the final disposal of the suit**. The

Respondents accordingly surrendered to court the letters of administration.

- [3] The Respondents on April 5, 2022 filed ***HCCS No. 25 of 2022 Kaahwa Martin Isaac & Irumba Harriet Karungi (Administrators of the estate of the late Kaliisa Stephen) v Kaliisa David*** (Formerly MSD Civil Suit No. 22 of 2022). The Plaintiffs on August 2, 2023 by a letter referenced **GEN/KA/908/23** sought leave of court to withdraw **HCCS No. 25 of 2022** (Formerly Masindi HCCS No. 22 of 2022) on the grounds that it was filed in their capacity as administrators which grant they have since surrendered to court and the second reason was that they had filed Hoima **HCCS No. 60 of 2023** in their capacity as beneficiaries which they desired to pursue. This application for leave to withdraw the suit is still pending disposal by this court. This suit also has arising applications for interim and temporary injunction orders Vide Masindi **HCMA No. 40 of 2022** and Masindi **HCMA No. 39 of 2022** respectively filed by the Plaintiffs.
- [4] Earlier on, the Applicant, **Kaliisa David** on April 25, 2022 filed Masindi **HCMA No. 52 of 2022** against the Respondents seeking dismissal of Masindi **HCCS No. 25 of 2022 (formerly MSD C.S No. 22 of 2022)** for failure to disclose a cause of action and for being instituted by the Respondents without locus. This application is also still pending disposal before this court.
- [5] The Respondents/plaintiffs on July 7, 2023 filed **HCCS No. 60 of 2023** against the Applicants/defendants; (***Kaahwa Martin Isaac & Irumba Harriet Karungi Vs Kaliisa David***) at Hoima for inter alia, ***intermeddling with the estate of the late Kaliisa Stephen, a declaration that the plot of land comprised in Plot 61 Rukurato road at Park Cell, Central Ward, east Division, Hoima City belongs to the estate of the late Kaliisa Stephen, an order to secure a permanent injunction to restrain the Defendant and his agents from further intermeddling with the estate of the late Kaliisa Stephen and an order for distribution of the estate of the late Kaliisa Stephen according to the law of succession.***
- [6] It appears the dispute and/or dissatisfaction of the Plaintiffs as can be gathered from the pleadings on record arises from the Defendant's claim

or proposition that **plot 61 Rukurato road at Park Cell, Central Ward, East Division, Hoima City** on which **M/s Christ the Way Church** (limited by guarantee) founded by the parties' father, the late **Kaliisa Stephen** carried on church ministry does not belong to the estate of the late **Kaliisa Stephen**. According to the Plaintiffs, the Defendant even attempted to register it in his personal name. The Plaintiffs claim that the Defendant has dismissed them and all the beneficiaries of the estate of the late **Kaliisa Stephen** from the financial and leadership roles of the church and in their place has substituted them with his wife as the life treasurer of the church and the two have run the same without structures and accountability to the Plaintiff's prejudice.

- [7] The Defendant posits that the plot claimed by the Plaintiffs is church property and he applied to have it registered it as property of the church. The Defendant opposed **HCCS No. 60 of 2023** and contended that the suit plot does not belong to the estate of his father but is property of **M/s Christ the Way Church** (limited by guarantee) which he leads. The Defendant filed **HCMA No. 35 of 2023** for dismissal of **HCCS No. 60 of 2023** as improperly filed in abuse of court process. This application is also pending before this court.

### **Counsel Legal Representation**

- [8] The Applicant was represented by **Mr. Kasaija Raymond of M/s Kabega, Bogezi & Bukenya Advocates, Kampala** while **Mr. Simon Kasangaki of M/s Kasangaki & Co Advocates, Masindi** appeared for the Respondents. Both counsel filed their respective submissions for consideration in the determination of this application.

### **Consideration of the Application**

- [9] Abuse of court process was considered by this court in the case cited by Learned Counsel for the Applicant in ***Male Mabirizi Vs Attorney General, HCMA No 917 of 2021***. Court observed that an abuse of the Court's process would, in general, arise where the Court is being used for improper purposes, as a means of vexation and oppression, or for ulterior purposes; that is to say, court process is being misused. The proceedings, in such a case, should be shown to be frivolous, vexatious or harassing,

or groundless not based on law. See *Meme Vs Republic [2004] 1 EA 124 (HCK)*. The court cited the case of the Supreme Court of Nigeria in *Chief B. A. Allanah & Ors Vs Mr. Kanayo Kpolokwu & Ors, N.W.L.R. Part 1507 Page 1, Per Amiru Sanusi, JSC*;

*“The concept of abuse of court process is not precise as such. It involves peculiar or various conditions, but in a nutshell, the common feature of abuse of process of court centres on improper use of judicial process by a party in litigation aimed or targeting on interference with due administration of justice. To my mind, some of the features of abuse of court process include the under mentioned features, even though they are by no means exhaustive. These features are:*

- i. Filing of multiplicity of actions on the same subject matter against the same opponents on the same issues or numerous actions on the same matter between the same parties even where there is in existence, a right to commence the action.*
- ii. Instituting different actions between the same parties simultaneously in different courts even though on different grounds.*
- iii. Where two or more similar processes are used in respect of the exercise of the same right, for instance, a cross appeal and a respondent’s notice.*
- iv. Where two actions are instituted in court the second one asking for relief which may however be obtained in the first, the second action is, prima facie vexatious and an abuse of court process.”*

[10] I have considered it important to set out in detail all the pending matters in this court and the lower court between the parties to this application in order to put in perspective the basis for my conclusion that the current **HCCS No. 60 of 2023** was not filed in abuse of court process. The matters subject of litigation between the parties are multifarious and most of them pending hearing and/or decision. The two cases pending in this court were filed under different circumstances which are self-evident in the matters. The first suit, i.e **C.S No.25 of 2022** (Formerly MSD C.S No.22 of 2022) was filed by the Plaintiffs as administrators, before the letters of

administration were surrendered. The second suit i.e **C.S No.60 of 2023** was filed by the Plaintiffs as beneficiaries after the letters of administration were surrendered. The Plaintiffs applied to withdraw the first suit which is an expression of their interest to proceed with only one suit.

- [11] The third suit i.e **C.S No.17 of 2022** which is brought out in the submissions of counsel for the Applicants as existing in the lower Chief Magistrates court of Hoima was filed by the Applicant against the Respondents. Its institution cannot be counted on the Respondents to suggest that they abused court process to institute a suit to determine their rights in the estate before this court.
- [12] This court however, observes that the gist of the dispute or key aspect of disagreement between the parties is the ownership of **Plot 61 Rukurato road at Park Cell, Central Ward, East Division, Hoima City** measuring **approximately 50 by 100 ft.** The Respondents contend that this property forms part of the estate of the parties' deceased father **Kaliisa Stephen** which the Applicant contends that it is the property of **M/s Christ the Way Church** (limited by guarantee).
- [13] I find that these are contentious triable issues for determination by this court. It is the view of this court that in order to resolve the dispute between the parties, it is important to accord them a hearing and receive the evidence of all the parties and their witnesses to enable court render a reasoned decision after a through judicial inquiry. **Civil Suit No. 60 of 2023** is intended to settle the estate disputes brought out by the parties before court. The previous suit i.e **Civil Suit No. 25 of 2022** (Formerly Masindi HCCS No. 22 of 2022) filed by the Respondents against the Applicant as administrators was affected by the Respondents' surrender of the letters of administration back to Hoima Chief Magistrates Court as per the orders of the Chief Magistrate in **C.S No.17 of 2012** which would render **Civil Suit No. 25 of 2022** (Formerly **Masindi HCCS No. 22 of 2022**) based on the said grant, overtaken by events and not viable hence its withdraw pending before this court. It is therefore apparent that the Respondents applied to withdraw **Civil Suit No. 25 of 2022** (Formerly Masindi HCCS No 22 of 2022) so that the parties could proceed with the

current **Civil Suit No. 60 of 2023** which properly pleads all issues in controversy for determination by this court.

- [14] It was also the Respondents' counsel's further submission that the estate of the parties' father, the late **Kaliisa Stephen** has no administrators which this court ought to appoint. I find that it is apparent that the shares and properties of beneficiaries are highly contested and the issues surrounding the contestation ought to be determined by this court.
- [15] It is a fact that the Respondents applied for letters of administration to the estate of the late **Kaliisa Stephen** from the lower court vide **Hoima Chief Magistrates Court Administration Cause No. 24 of 2022** but later surrendered them back to court. The Respondents had premised **HCCS No. 25 of 2022** (formerly Masindi HCCS No 22 of 2022) on the surrendered letters of administration. It is however, in my view, that the Respondents' surrender of the grant to court as per the Magistrate's order did not amount to revocation of the grant. The Respondents retained their status as administrators of the estate of the late **Kaliisa Stephen** until the grant would be revoked. It was within the Respondents' right nevertheless to withdraw **HCCS No.25 of 2022**. Therefore, in view of the necessity and interest of justice to have the dispute/controversy between the parties heard and finally determined, I proceed to allow the withdraw of **HCCS No.25 of 2022** with no order as to costs.
- [16] In the premises that the lower court **C.S No.17 of 2022** is of the same subject matter as the present suit, I deem it necessary to stay it pending the determination of the present main suit **HCCS No.60 of 2023**.
- [17] Consequently, both the Applicant's **HCMA Nos. 52 of 2022** and the Respondents' **MSD M.A No. 39 of 2022** for a temporary injunction collapse by the withdrawal of the head suit from which they arise. In the premises, it is ordered and directed that **HCCS No. 60 of 2023** shall proceed and be determined on merits.
- [18] In conclusion, **HCMA No. 35 of 2023** fails with no order as to costs since

the parties are all the children of the late **Kaliisa Stephen** whose estate they are disputing over. The Registrar of this court is directed to, as soon as possible, fix **HCCS No. 60 of 2023** for hearing and/or expeditious disposal.

[19] Order accordingly.

**Dated at Hoima this 7<sup>th</sup> day of June, 2024.**

.....  
**Byaruhanga Jesse Rugyema**

**JUDGE**