

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT MBALE**

**HCT-04-CV-MA-0033-2012
(ARISING FROM HCCA NO. 39-1998)
(ARISING FROM CIVIL SUIT NO. 19/1999)**

**ALBERT EFUMBI.....APPLICANT
VERSUS
JUMA OKUNI.....RESPONDENT**

BEFORE: THE HON. MR. JUSTICE HENRY I. KAWESA

RULING

Applicant brought this application under O.52 r. 2 and 3 of the Civil Procedure Rules and Section 98 of the Civil Procedure Act that the order dismissing the appeal for want of prosecution be set aside with costs.

The application lists six grounds and is supported by the affidavit of **Wabwire David**. The application is dated 29th February 2012, while the order of dismissal was issued on 30.03.2010. The respondent filed an affidavit in reply in effect challenging applicant's *locus standi* to file the appeal. Applicant filed an affidavit in rejoinder insisting that he has *locus standi* to file the appeal.

On 12.03.2014 when the matter came for hearing **Mulangira, counsel** for Respondents raised a preliminary objection and requested court to allow him address it before further hearing of the main application.

Court in the presence of **Counsel Obedo** for applicant, ordered the parties to file written submissions under an agreed schedule; lasting on 10th April 2014, when matter would be mentioned for fixation of date of Ruling.

By 10th April 2014, when court mentioned and fixed the Ruling for 15.05.2014, only the Respondents had filed their submissions. Applicants opted to file nothing hence left it to court.

By virtue of the preliminary objection by Respondents, this court will first dispose off the issues raised before going into the merits of the application.

The preliminary objection raised three issues namely that;

1. That the application was defective being brought by a wrong party (A dead person).
2. Application is vexatious and in bad faith.
3. That the application and intended appeal were brought with due delay and have no merit.

I will discuss all the above issues together since in the submissions, the issues revolve around the same broad issue. This is the fact that the applicant **Albert Efumbi** is a dead person, and the affidavit in support and affidavit in rejoinder sworn by applicant, and affidavit in reply by Respondent all show that **Albert Efumbi** is indeed dead.

Quoting section 11(7) of the Law Reform (Miscellaneous Provisions) Act Cap. 71;

“the personal legal representative of the deceased is the only one empowered to defend actions brought against the estate of a deceased person.”

He referred to ***Paul Nnyamarere v. Uganda Electricity Board H/C Misc. App. 290/2007***, holding that;

“a nonexistent entity cannot sue or be sued and such suit is a nullity.”

Without wasting time, a cross check of the proceedings indicate that the applicant **Albert Efumbi** is by confession of the “purported heir” **Walusimbi**’s affidavit long dead. The said **Walusimbi** in paragraph 2 of his affidavit in support that he is the elder son and heir of his late father **Albert Efumbi**.

In paragraph (10) he states that he swore the affidavit in support of “My application to reinstate the appeal” am in the process of applying for letters of Administration so that my name is substituted to that of his late father Efumbi. This was attacked by Respondent’s affidavit in paragraph 4, 5, 6, and 7 and therefore prayed for its dismissal.

I agree with Respondent’s contention that the applicant in this matter is a dead person who cannot come to court save by way of a legal representative. There is no such legal representative and **Wabwire** the deponent of the affidavit in support of the application is an unknown stranger to the proceedings. He has no letters of administration/probate. He is not appointed legal representative, he therefore had no capacity to swear an affidavit in support of an application seeking to reinstate an appeal of a deceased person.

The above finding builds into the other issues raised by counsel for respondents showing that this application was brought in bad faith, in a deliberate desire to abuse the process of court, and is to that extent bad in law.

I adopt and agree in total with all issues and legal points of law and fact pointed out by counsel for respondents regarding this application. I do castigate counsel for applicants for insisting on frustrating the process of justice since 1995, even after the numerous court interventions to try to put this matter to rest.

As trained lawyers they should professionally handle matters; and advise clients on the law. Section II of the Law Reform Provisions Act, The Succession Act, Administrator Generals Act, the Civil Procedure Rules, the Civil Procedure Act, all contain legal guidance as to how this matter ought to have been handled. In its present form, this application violates all known rules of Civil Procedure and law and as pointed out by counsel, cannot progress beyond this stage; it having been found to be a nullity, brought by a non existing party and supported by the wrong person. It is frivolous, vexatious, intended to delay and cause an abuse of the process of justice.

The application is for the stated reasons above dismissed with costs to the Respondents. I so order.

Henry I. Kawesa

JUDGE

15.05.2014