

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT JINJA**

CIVIL APPEAL NO. 082 OF 2010

5 (ARISING FROM IGANGA CIVIL SUIT NO. 067 OF 2008)

EFULANSI

NAKAMYA:.....APPELLANT

10

VERSUS

1. SSAMANYA KALOGO

2. ABISEWA

MOSES:.....RESPONDENTS

15

BEFORE: THE HON. JUSTICE GODFREY NAMUNDI

JUDGMENT

20

This Appeal arises out of the Ruling of the Magistrate Grade 1 at Iganga, her Worship Eleanor Khainza.

Therein she upheld a preliminary objection raised by
25 Counsel for the Defendant/Respondent challenging the Plaintiff's locus standi in filing a suit when she had no Letters of Administration for her husband's Estate.

The Appellant is the widow of Yeseri Kalogo and biological mother of the 1st Defendant/Respondent.

5 The first Respondent was born shortly after the death of his father (Plaintiff was pregnant at the time of her husband's death). When the 1st Defendant grew up, he sold part of the land forming part of the Estate of his father on grounds that this was his share.

10 The Plaintiff had not obtained Letters of Administration and neither had she distributed the suit land.

The first Defendant also had no Letters of Administration, but just sold the land on grounds that he
15 is his father's son.

The Magistrate in striking out the Plaint relied on Section 188 of the Succession Act.

20 The Appellant filed one ground of Appeal to wit:
"The learned trial Magistrate erred in Law and fact when she failed to properly evaluate the evidence on record thus arriving at a wrong decision."

It was argued for the Appellant by her Counsel Mr. Onesmus Tuyiringire that Section 188 of the Succession Act has to be read together with Section 27 of the same Act. He also cited the authority of **Israel Kabwa Vrs. Martin Banoba Musega - SCCA 52/95**, wherein it was held that a person with an interest in the estate has the capacity to sue to protect that interest.

In the instant case, it was argued, the Appellant as a widow had her interest challenged by the 1st Respondent when he sold part of the land to Respondent No. 2. Her interest is established by Section 27 of the Succession Act at 15% minimum.

For the Respondents, Mr. Aloysius Liiga submitted that the 1st Respondent sold his share of his father's Estate with the knowledge of the Appellant who then turned around and sued him wrongfully.

That Section 188 is very clear and is not qualified in any way.

In reply, it was argued for the Appellant that the claim that the 1st Respondent had got his share of the Estate is not true.

5 I have considered the submissions by both Counsel. The salient facts are that the Estate had never been distributed, there is no evidence to that effect.

Secondly, the Appellant was the widow of the deceased
10 Yeseri. She accordingly had an interest in the Estate which she was bound to preserve and protect with or without Letters of Administration.

The trial Magistrate should have considered the
15 provisions of **Section 27 of the Succession Act** together with **Section 188**.

The Appellant's interest was duly established. She should have gone further and considered the provisions
20 of **Section 268 (b)** of the same Act which gives a beneficiary leeway to sue in certain circumstances. The authority cited by Counsel Tuyiringire is a Supreme Court decision that clearly gives a beneficiary a right to sue for purposes of protecting his/her interest.

It is my finding therefore that the Magistrate was wrong to strike out the Plaintiff, the way she did. She should have gone ahead and heard all the evidence and made a
5 decision on the merits of the case, rather than a technicality that is not sustainable.

The Appeal is allowed. The Ruling of the trial Magistrate is set aside. The trial record is to be remitted to the trial
10 Court with directives that the case must be heard to its final conclusion.

The Respondents will meet the costs of this Appeal.

15

Godfrey Namundi

JUDGE

30/06/2015

30/06/2015:

2nd Respondent present

Appellant and 1st Respondent absent

Both Counsel absent

5

Court: Judgment read in Court.

Godfrey Namundi

10 **JUDGE**

30/06/2015

15