

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**CIVIL DIVISION**

**HCCS. NO. 269 OF 2015**

**WAVAMUNO SEMANDA .....PLAINTIFF**

**V**

**SECURITY GROUP LTD.....DEFENDANT**

**BEFORE HON. LADY JUSTICE H. WOLAYO**

**RULING**

The defendant in its defence raised a preliminary objection to the suit . Before mediation was to start, counsel for the defendant objected that it should not proceed before the preliminary objection is disposed off.

On 7. 3.2017, both counsel for the parties appeared before me and argued the preliminary objection.

Mr. Mugenyi appeared for the defendant while Mr. Tumwesigye Cliff appeared for the plaintiff.

The gist of the objection to the suit is that the plaintiff is not a holder of letters of administration and therefore does not have legal capacity to sue the defendant.

Counsel Mugenyi relied on a decision by Hon. Justice Andrew Bashaijja in **Rev. Onesifolo Ngaaga and another v Moses Matovu Jinja HCCS . No. 107 of 2003** in a suit where a customary heir purported to sell registered land of his deceased father. Subsequently, another person secured letters of administration and transferred the land to another person. Justice Bashaijja relied on section 191 (1) of the Succession Act to find that the sale by the customary heir was illegal. Section 191 provides as follows.

*‘Except as hereinafter provided, but subject to section 4 of the Administrator General Act, no right to any part of the property of a person who died intestate shall be established in any court of justice , unless letters of administration have first been granted by a court of competent jurisdiction.’*

Counsel for the plaintiff cited **Isreal Kabwa v Martin Banoba SCCA. No. 52 of 1995**, where the Supreme Court held that a beneficiary of an estate of an intestate has capacity to sue in his own names to protect the estate for his own benefit without first taking out letters of administration.

In the **Banoba case**, the Supreme Court clarified that a beneficiary can sue to protect the estate without first taking out letters of administration in spite of section 191 of the Succession Act. The High Court authority (**Matovu**) is relevant in as far as it clarifies that a party cannot defend a title he acquired from someone who did not have letters of administration.

Counsel for the plaintiff relied on section 6 of the Law reform Misc Provisions Act Cap in support of his contention that the suit was properly before the court.

Section 6 provides as follows.

*Every action brought under section 5 shall be for the benefit of the members of the family of the person whose death has been caused and shall be brought either by the executor or administrator of the person deceased or by and in the name or names of all or any of the family members of the deceased.'*

The plain meaning of this section is that a family member can bring an action in negligence on behalf of the deceased in their own right and not as administrators or executors. The court has a duty to give effect to the provisions of the law as enacted.

The Law Reform Act assigns the definition of family member in Workers Compensation Act cap 225 wherein a mother one of the persons defined as a family member.

There is no contradiction between section 191 of the Succession Act and the Law reform Act because the succession Act targets ascertainable movable and immovable property of an intestate while the Law reform act is concerned with the right to sue on behalf of a deceased person who dies as a result of a negligent act and for which he would have recovered damages had he survived the tort.

In the result, the mother of the deceased has a right to sue as a family member except that she must demonstrate sufficient proof that she is the mother of the deceased, through a birth certificate and other credible evidence.

The preliminary objection

I have examined the plaint and found that apart from a statement that Bonina Hope is the mother of the deceased and the plaintiff sues as her attorney, there is no other credible evidence attached to the plaint identify her as the mother.

I will invoke my inherent powers under section 98 of the CPA to allow the plaintiff to amend the plaint to attach proof that Bonina Hope is the mother of the deceased.

The amended plaint to be served on the defendant within seven days from to date and should the defendant wish to reply, the amended defence must be served within seven days from date of service of the amended plaint.

Thereafter, the file will return to the mediator to conclude mediation.

**DATED AT KAMPALA THIS 23<sup>RD</sup> DAY OF MARCH 2017.**

**HON. LADY JUSTICE H. WOLAYO**