

1 THE REPUBLIC OF UGANDA
2 IN THE HIGH COURT OF UGANDA AT MUKONO
3 MISCELLANEOUS APPLICATION NO.69 OF 2019
4 (ARISING FROM CIVIL SUIT NO.23 OF 2018)
5 (FORMERLY CIVIL SUIT NO.58 OF 2016)
6 ELVAIDA NDYABAHIKA:.....APPLICANT
7 VERSUS
8 ADYERI HOPE FLORENCE:..... RESPONDENT
9 09TH JULY 2019
10 BEFORE HON. LADY JUSTICE MARGARET MUTONYI, JUDGE HIGH COURT

11 RULING

12 This Ruling is in respect of an Application for leave to appeal against an interlocutory decision of
13 this court.

- 14 1. I have read the submissions of both sides.
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16 2. Leave to appeal from an order of court in civil proceedings granted where prima facie it appears
17 that there are grounds of which merit serious judicial considerations. See case of Sango bay
18 Ltd Vs. Dresdner (1971) E.A. 17 at page 20.

19 It is granted where the Applicant has no automatic right of Appeal.
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- 21 3. In the instant case leave to appeal is against the decision of court in determining the paternity of
22 the Respondent which is highly contested by the Applicant Elvaida Ndyabahika a step mother.
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24 This court does not agree with the submission of Counsel for the Applicant under paragraph 1
25 (b) that samples of the Applicants’ children are the best samples because they contain DNA
26 from her as well. The DNA with the alleged sibling can only be resorted to if the sample of the
27 father cannot be got.
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29 This is because resemblance can never be a basis for determining blood relationship.

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Paternity can be scientifically proven through DNA with the samples of the alleged father or mother.

In the instant case, the Applicant and her children have denied that the Respondent Adyeri Hope Florence is a daughter to Henry Ndyabahika.

The decision to do DNA test on the remains of Henry Ndyabahika is the only sure way of determining the paternity of this case and put to rest the only issue of contention. The Paternity of Adyeri Hope Florence.

The Applicant has not put forth any serious substantial questions of law warranting leave of court to appeal against the decision of helping the warring parties to establish the truth once and for all.

The question to be asked is, what if the DNA with the children of the Applicant turns out to be negative? Will the issue of paternity of Adyeri Hope Florence be resolved?

The answer is no because court is investigating the paternity of Adyeri Hope Florence and none of the five samples are from Henry Ndyabahika.

The Respondent will be at liberty to request for another DNA test using the sample of the late Henry Ndyabahika which would give 99% of the expected results. Either she will be found to be a biological child or not.

Section 33 of the Judicature Act, laws of Uganda provides that” The High Court shall in the exercise of the jurisdiction vested in it by the constitution, grant absolutely or on such terms and conditions as it thinks just, all such remedies as any of the parties to a cause or matter is entitled to..... so that as far as possible all matters in controversy between the parties may be completely and finally determined and all multiplicities of legal proceedings concerning any of these matters avoided.

In view of the last part of section 33 of the Judicature Act, the only way of avoiding multiplicity of proceedings in respect of the Paternity question of Adyeri Hope Florence is by carrying out the scientific test of DNA using the samples of the late Ndyabahika Henry.

65 In the result, this court does not find any substantial question of law to be determined on Appeal
66 at this interlocutory level of hearing.

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68 The Application for leave to Appeal is therefore dismissed. Since this is a family matter which
69 should come to an end.

70 I so Order.

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73 Margaret Mutonyi

74 **RESIDENT JUDGE**

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76 And the earlier position of this court of conducting the entire process within two months is
77 ordered.

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81 Margaret Mutonyi

82 **RESIDENT JUDGE**

83 **MUKONO HIGH COURT CIRCUIT**

84 **09th JULY 2019**

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