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**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)
CIVIL SUIT NO. 579 OF 2016**

OMONY CHARLES:.....PLAINTIFF

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VERSUS

ATTORNEY GENERAL:..... DEFENDANT

BEFORE: HON. JUSTICE ESTA NAMBAYO

JUDGEMENT

The Plaintiff brought this suit under the provisions of the **Law Reform (Misc. Prov.) Act, Cap 79** against the defendant for loss of dependency, loss of expectation of life and bereavement. He seeks for orders of this Court that the defendant pays general damages, punitive and exemplary damages, interest and costs of the suit.

Background to the suit

Briefly, the background to this suit is that on the 2nd of November, 2014, Oyet Charles was shot dead by ASP Mugabi Ronald, the then DPC at Kireka Police Station, hence this suit.

Representation

Learned Counsel Nakigudde Winnie appeared for the Plaintiff while Mr. Bichahi Ojambo, State Attorney from the Attorney General’s Chambers represented the Defendant. The Plaintiff presented three witnesses.

At close of the Plaintiff’s case, the defendant did not present any witnesses. The learned State Attorney raised a preliminary objection in his submissions that the Plaintiff has no locus to file this suit under the Law Reform (Miscellaneous Provisions) Act Chapter 79, against the Defendant.

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He relied on S.1 of the Act which provides that a personal representative means;

I. In the case of a deceased person to whom the Succession Act applies either wholly or in part, his or her executor or administrator;

35 *II. In the case of any other deceased person, any person who, under the law or custom, is responsible for administering the estate of the deceased person.*

The learned State Attorney also relied on Section 6 (i) of the Law Reform (Misc. Prov.) Act, Cap 79, which provides that actions brought under Section 5 shall be brought either by and in the name of the executor or administrator of the person deceased or by and in the name or names of all or any of the members (if more
40 than one) of the family of the person deceased.

He submitted that there is no evidence in this case to show that the Plaintiff is the executor or administrator of the estate of the late Oyet Charles. That much as the plaintiff's evidence is that this suit is brought for the benefit of the members of the deceased's family, there is no evidence to show that the plaintiff was the appointed
45 Executor or Administrator of the estate of late Oyet Charles to file this suit, neither is there evidence to show that he is one of the members of the deceased's family.

Counsel averred that the plaintiff has no locus standi to file this suit and the same should be dismissed with costs for failure to adhere to the Law.

He emphasized that parties are bound by their pleadings and should not be allowed
50 to depart from the same except by amendment. That in this case, the plaintiff states under paragraph 3 of the plaint that he is an uncle to the late Oyet Charles and yet in his witness statement, he states that the late Oyet Charles was his cousin brother.

That according to Merriam Webster Dictionary, an uncle is the brother of one's father or mother or the husband of one's aunt while cousins are kindred who are
55 the issue of two brothers or two sisters or of a brother and a sister.

Counsel contended that there is a very big difference between an uncle and a cousin. That the contradiction in this case shows that the plaintiff's relationship with

the deceased cannot be ascertained. He emphasized that the plaintiff cannot be an uncle and a cousin at the same time. That it also clearly shows that the evidence of the witness is tainted with falsehoods and the same cannot be relied on by this Court to prove any legally binding and reliable admissible evidence. He prayed that the testimony and evidence of Omony Charles, PW3, should be expunged from court record.

Counsel relied on Section 101(1) of the Evidence Act, Cap 6, which provides that whoever desires any court to give judgement as to any legal right or liability dependent on the existence of facts which he or she asserts must prove that those facts do exist and that in the case of *Kailash Mine Limited -v- B4S Highstone Limited, HCCS No. 139 of 2012*, the court noted that the silence of the defendant does not prove the plaintiff's case. That its thus untenable to submit that since the defendant did not call any witness, the plaintiff's case has been proved.

Counsel averred that whether the defendant calls witnesses or not, the plaintiff has to prove his/her case to the required standard. That this court has a duty to interrogate the authenticity and veracity of the plaintiff's claim by applying the law on evidence and sound judicial doctrines. He prayed that this case be dismissed.

In reply to the preliminary objection, Counsel for the Plaintiff re-emphasized S. 6(1) of the Law Reform (Miscellaneous Provisions) Act and explained that the law refers to two categories of people; the Executor/Administrator of the deceased's estate and/or member(s) of the deceased's family; as people who are eligible to file a suit for the benefit of the family members. That in this case, the plaintiff instituted this suit in his capacity as an Uncle to the late Oyet Charles. That the use of Uncle and Cousin makes no difference because they both refer to a member of the family.

Analysis.

S. 5 of the Law Reform (Miscellaneous Provisions) Act Cap 79 provides for actions maintainable when death is caused by negligence. It states as follows;

85 *"if the death of any person is caused by any wrongful act, neglect or default of any*
person, and the act, neglect or default is such as would, if death had not ensued,
have entitled the person injured by it to maintain an action and recover damages in
respect of it, the person who would have been liable if death had not ensued shall
be liable to an action for damages, notwithstanding the death of the person injured,
90 *and although the death was caused under such circumstances as amount in law to a*
felony."

Section 6 (1) of the Act provides for persons eligible to file a suit under S.5.
It states that: -

"Every action brought under section 5 shall be for the benefit of the members of the
95 *family of the person whose death has been so caused, and shall be brought either*
by and in the name of the executor or administrator of the person deceased or by
and in the name or names of all or any of the members (if more than one) of the
family of the person deceased."

Under S. 1 (b) of the Law Reform (Miscellaneous Provisions) Act, Cap 79, it is
100 provided that;

"member of the family" has the same meaning as in the Workers Compensation Act;
but for the purposes of this Act, a person shall be deemed to be the father or
mother or son or daughter of a deceased person notwithstanding that he or she
was only related to the deceased person illegitimately or in consequence of
105 *adoption; and, accordingly, in deducing any relationship which is included in this Act*
within the meaning of the expressions "father", "mother", "son" and "daughter", any
illegitimate person and any adopted person shall be treated as being, or as having
been, the legitimate offspring of his or her mother and reputed father or, as the
case may be, of his or her adopters"

110 My understanding of the above provision of the law is that the phrase 'member of
the family' is limited to a father, mother, son, daughter and adopted or illegitimate

children. Uncles and/or Cousins are not envisaged members of the family and as such, cannot file a suit for the benefit of the members of the family in that capacity under the Law Reform (Miscellaneous Provisions) Act, Cap 79. They may only file a claim if they are Executors or Administrators of the deceased person's estate.

In this case, the Plaintiff being an Uncle or Cousin to the deceased, without being an Executor or Administrator of the deceased's estate, was not eligible to file this suit for the benefit of the members of the family.

Therefore, I find merit in the preliminary objection raised by the Learned State Attorney, which I do hereby uphold and dismiss this suit from court.

Each party will bare its own costs.

I so order

Dated, signed and delivered by mail at Kampala this 13th day of January, 2023.

Esta Nambayo
JUDGE
13th/01/2023.