

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT FORT PORTAL**  
**CIVIL MISC. APPLICATION NO. 057 OF 2023**  
**(ARISING FROM CIVIL APPEAL NO. 0038 OF 2018 & CIVIL SUIT NO.**  
**0046 OF 2014)**

**BYOMUHANGI CHRISTOPHER ::::::::::::::::::::::::::::::::::: APPLICANT**

**VERSUS**

**RUGUMYA JONES ::::::::::::::::::::::::::::::::::: RESPONDENT**

**BEFORE: HON. JUSTICE VINCENT WAGONA**

**RULING**

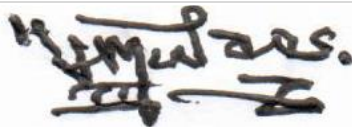
The applicant brought this application under section 98 of the Civil Procedure Act, Section 222 of the Succession Act and Order 22 rule 4(1) and (2). Order 6 rule 19 of the Civil Procedure Rules for orders that;

- 1. The Respondent be granted letters of administration ad litem, limited for purposes of defending civil appeal no. 38 of 2018.**
- 2. That Rugumya Jones be substituted in the place of the late father, Rujabuka Paul in Civil Appeal No. 38 of 2018**
- 3. That the memorandum of appeal be amended to read the name of the appointed administrator instead of the late.**
- 4. That Civil Appeal No. 38 of 2018 be set down and heard interparty.**
- 5. That the Costs of the application be provided for.**

The application is supported by the affidavit of Byomuhangi Christopher, the applicant who deposed as follows:

1. That he instituted Civil Appeal No. 38 of 2018 against Rujabuka Paul now deceased which is pending hearing but the respondent has since died.

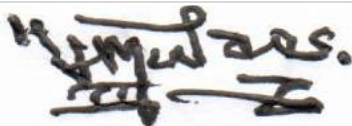
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2. That he is not aware of any process by the family of the deceased to appoint a representative for purposes of applying for the grant of letters of administration or any holder of such letters. That the Respondent is the older son of the late who should be appointed as an administrator ad-litem for purposes of prosecuting the pending appeal.  
5
3. That the applicant is still interested in prosecuting the appeal and the family of the deceased may not be willing to appoint a representative to enable them keep in use of the suit land.
4. That his appeal is in looming danger of being dismissed for want of prosecution and he cannot prosecute the same against the late. That it is in the interests of justice that this application is granted.  
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The application was opposed by the Respondent who averred that:

1. That the applicant is guilty of dilatory conduct as regards prosecuting the appeal at hand. That the same should have been concluded before the passing of the late. That the family commenced the process to appoint an administrator and the process is in advanced stages having had a meeting with the Chief Administrative Officer/Administrator General.  
15
2. That the application was filed prematurely as a grant of the same will preempt the family decision to appoint a suitable legal representative of the deceased.  
20
3. That for one to be competently appointed to replace a deceased, he or she must be an executor of the estate which he is not and the applicant cannot seek to appoint an administrator of his choice.
4. That the deceased had entered into a sale agreement with the applicant and the transaction could not survive the deceased thus rendering the suit  
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incompetent. That there is no need to amend the memorandum of appeal since there is no competent appeal before Court.

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5. That the applicant has over a long time demonstrated unwillingness to prosecute the appeal therefore being patient for a short while to allow the family to appoint an administrator would not cause any injustice.

In rejoinder, it was contended by the applicant as follows:

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1. That he has always made efforts to have the case heard and his lawyer wrote several letters to the Registrar to cause the case to be heard. That the family has not commenced any process to appoint an administrator as no evidence was adduced to that effect.
  2. That the cause of action survives the deceased and after the death of Rujabuka, the suit land forms part of his estate to be administered by the administrator of his estate.
  3. That the application was filed within the stipulated time and as such should be granted.
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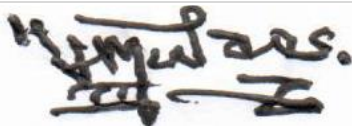
***Issues:***

- 1. Whether or not the Respondent should be appointed as administrator ad-litem and substituted as a respondent in Civil Appeal No. 38 of 2018.**
- 2. Remedies available.**

20 ***Representation and hearing:***

Mr. Herbert Kwikiriza appeared for the applicant while Mr. Obed Mwebesa appeared for the Respondents. Both counsel addressed me on the merits of the application through written submissions which I have considered.

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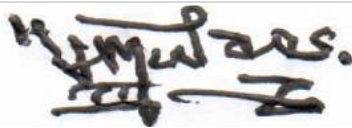
***Resolution:***

**Whether or not the Respondent should be appointed as administrator ad-litem and substituted as a respondent in civil appeal no. 38 of 2018.**

5 Learned counsel for applicant contended that Section 222 of the Succession Act and Order 22 rule 4 of the Civil Procedure Rules allows court to appoint an administrator ad-litem for purposes of continuing a suit by or against the estate of the late. That in this case Mr. Rujabuka Paul died before the conclusion of Civil Appeal No. 38 of 2018 as such the claim against him survives and it is in the interests of justice that  
10 the application is granted and the Respondent added as a party to the suit to continue with defending the appeal against the late. That the Respondent should also be substituted as a Respondent to the appeal by virtue of the powers granted to this Court under Order 6 rule 19 of the Civil Procedure Rules.

15 In reply Mr. Mwebesa opposed the application and the gist of his objection is that if a person dies only an administrator or executor of the estate is allowed to apply to the substituted as a party. He cited the case of *Mugassha Rodney (Legal Representative/Beneficiary of the estate of the late SamwiriMishambiKwesiga V Housing Finance Bank & Anor, Civil Misc. Application No. 1132 of 2020.*

20 Learned counsel also argued that in the case of *Okway John Kimbo (Legal Representative of the late Anna Ayeyotho) Vs. Oddia Nuru & Anor, HCMA No. 39 of 2019* Justice Stephen Mubiru emphasized that: “A *grant of this nature is made where owing to the special circumstances of the case, the urgency of the matter as*  
25 *appears from the affidavit is so great that it would not be possible for the court to make a full grant in sufficient time to meet the necessities of the estate of the*



*deceased. It is in the nature of a grant of administration ad-litem, limited for the purpose of filing or prosecuting a suit or defending a suit, with no powers to the grantee to distribute the estate under the grant”.*

5 He submitted that the Respondent was not an administrator or executor of the late as such he couldn't be substituted and further that the applicant did not demonstrate that the matter was urgent to warrant a grant of administrator ad litem. He thus asked Court to have the application at hand dismissed with costs.

10 ***Consideration by Court:***

Merriam Webster defines an administrator ad item as an administrator appointed to represent an estate that is a necessary party to a lawsuit. (available on [www.merriam-webster.com](http://www.merriam-webster.com)). Therefore, an ***administrator ad litem*** connotes a person appointed by a court of law or tribunal to represent the interests of an estate of a deceased person  
15 in an action before Court. The term “***ad litem***” is a Latin word which means for “during the litigation” or “during the action”. Therefore, the administrator ad litem is only responsible for representing the estate's interests in a particular lawsuit, proceeding, or action they are appointed for. An administrator ad litem is typically required when the estate has no existing administrator, or the personal representative  
20 of the estate has conflicting interests in the lawsuit or action where the estate needs representation. (See [www.yourdictionary.com](http://www.yourdictionary.com)).

Section 222 of the Succession Act provides that: “***When it is necessary that the representative of a person deceased is made a party to a pending suit, and  
25 the executor or person entitled to administration is unable or unwilling to act, letters of administration may be granted to the nominee of a party in the suit,***

*limited for the purpose of representing the deceased in that suit or in any other cause or suit which may be commenced in the same or in any other court between the parties, or any other parties, touching the matters at issue in that cause or suit, and until a final decree shall be made in it, and carried into complete execution.”*

5 The above provision in view covers extensively the aspect of administrator ad litem. It arises where a party to a suit dies and the executor or administrator is not willing to act, then court may grant letters of administration to a person nominated by the surviving party for purposes of commencing or continuing the proceedings by or against the deceased. This is premised on Order 24 rule 1 of the Civil Procedure  
10 Rules that the death of a plaintiff or defendant shall not cause the suit to abate if the cause of action survives or continues. It is my view, that the section equally applies to instances where there is no administrator or executor where in such scenario court may appoint a nominee by the surviving party as an administrator limited for the purposes of the proceedings before court.

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In the persuasive Kenya case of *Winrose Emmah NdindaKiamba v Agnes Nthambi Kasyoka [2021] eKLR, Kemei J* while considering Sections 54 and 55 of the Law of Succession Act of Kenya observed that: *“The above provisions are clear and that such a grant is normally issued due to the exigencies arising in relation to the  
20 estate and which could not wait for issuance of full grant through the normal way. It is also issued without prejudice to the right of any other person to apply for full grant of representation to the deceased. As such, limited grant may not be subjected to full and strict compliance with the requirements meant for, as if it is full grant of representation. Again, the person to whom the grant is so made  
25 undertakes to administer the estate according to the law but limited for the purpose*

*for which the grant is issued until a further grant of representation is made by the court.”*

He further noted that: *"The aforementioned, clearly depicts that the aspect of consent with regard to special limited grants of representation need not be mandatory..... From the foregone, it is clear that a Limited Grant of Letters of Administration Ad Litem is usually used when the estate of a deceased person is required to be represented in court proceedings.."*

10 In another persuasive authority by the supreme court of Tennessee in the Estate of *Rusell Vs Snow, 829, SW.2d 136*, it was observed in relation to an administrator ad – litem thus: *"An administrator ad litem is appointed for a limited and special purpose. Court may proceed with the appointment of the general administrator and the two may subsist. See Mckay Vs. MK Nasb 97 Tenn 236, 36 S.W.A 109, 15 1896...Court is entitled to appoint any person as an administrator not to abate a party's claim. .... the probate or chancery courts having jurisdiction where the estate of the deceased must be represented and there is no executor or administrator of such estate, it shall be the duty of the judge or chancellor thereof in which such proceedings is had to appoint an administrator of such estate for 20 the particular proceedings and without requiring a bond from him."*

In *Okway John Kitimba Vs. OddiaNuru& Anor, HCMA No. 39 of 2016, Mubiru J* observed in relation to courts power to appoint administrator ad litem thus;

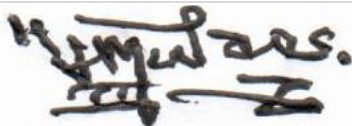
25 *"A grant of this nature is made where owing to the special circumstances of the case, the urgency of the matter as appears from the affidavit is so great that it*



*would not be possible for the court to make a full grant in sufficient time to meet the necessities of the estate of the deceased.”*

After consideration of Section 222 of the Succession Act and the persuasive reasoning in the authorities cited above, I find that court has power to appoint an administrator ad-litem and such appointment does not follow the due processes involved in appointment of a substantive administrator. The Court in this case shoulders the duty to securitize the evidence presented to ensure that the person appointed has no adverse interests in the estate and his appointment should be for the good of the estate. An administrator ad-litem is only appointed in cases where there is urgency and waiting for due processes of the law which would either cause an injustice to a party or loss to the estate. An administrator ad-litem need not be interested in the case. Where in court’s view a party before it is entitled to a quick remedy or where the suit shall abate if there is no legal representative is present, upon application and satisfactory evidence presented to that effect, court may exercise its discretion to appoint an administrator ad-litem.

In this case, the applicant contends that the late Rujabuka Paul was a party to Civil Appeal No. 38 of 2018 which he commenced and he died before conclusion of the suit. That since his death, no executor or administrator has been appointed by the family to defend the appeal. That there is a risk of the appeal being dismissed for want of prosecution in the event that an executor or administrator is not appointed and thus asked court to appoint the Respondent as an administrator ad litem to defend the appeal so that it is disposed of. The Respondent on the other hand accused the applicant of not making efforts to have the case heard and that the family was in the

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process of appointing an administrator and as such the application at hand was premature.

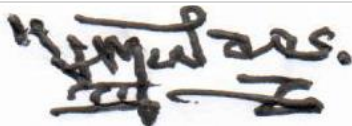
5 It is not disputed by the Respondent that Rujabuka Paul was his father and as such he is a beneficiary under the estate. Secondly, it is admitted that the late was a respondent to Civil Appeal No. 38 of 2018 where the applicant challenged the decision of the trial court that declared the late the owner of the suit land in Civil Suit No. 46 of 2014. It is also not contested that the late died before the conclusion of the appeal and the appeal is old and thus suffers the threat of dismissal for want  
10 of prosecution in the event that no effort is made by the applicant to have the same prosecuted. Whereas the Respondent alleged that the family was in the process of having a legal representative of the estate appointed and had already had a meeting with the CAO/Administrator General, no evidence was presented to that effect. This therefore means that there is no effort by the family of the late to appoint an  
15 administrator so as to defend the appeal by the applicant.

Further the Respondent did not contest his appoint as an administrator ad-litem save for alleging that they were in the process of appointing a legal representative which allegation fell short of poof. I have also not been able to find any evidence that points  
20 to the fact that the Respondent has adverse interest in the estate which may be injurious to the estate of the late. I therefore find that this is a proper case for appointment of an administrator ad-litem for the limited purpose of having the pending appeal which is a backlog concluded. I also find the Respondent a suitable person to be appointed as such.

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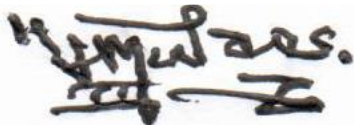
This application therefore succeeds with the following orders;

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1. That the Respondent is appointed as an administrator ad-litem only for the limited purpose of defending Civil Appeal No. 38 of 2018.
2. That the Respondent is hereby substituted to become the Respondent in Civil Appeal No. 38 of 2018 and the memorandum of appeal shall be amended to reflect this order.
3. That the Respondent is hereby authorized to plead or act on behalf of the late Rujabuka Paul in this case with full powers as a party.
4. That any expenses or costs incurred shall be borne by the estate.
5. That for purposes of expediting the appeal, the appellant is given two weeks from the date of delivery of this ruling within which to file and serve their written submissions and the respondent is also given two weeks within which to respond and any rejoinder should be filed within one week from the time of service of the respondent's submissions. The appeal is thus fixed for mention on 13<sup>th</sup> October 2023.
6. Each party shall bear their own costs of this application.

I so order.



Vincent Wagona

**High Court Judge**

**FORT-PORTAL**

**DATE: 15.09.2023**

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