

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT FORT PORTAL

MISC. APPLICATION NO. 090 OF 2021

**(ARISING FROM HCT – 01 – CV – CS – LD- 012 OF 2012 AND MISC
5 APPLN NO. 009 OF 2013)**

- 1. MUDAKI RAJAB**
- 2. OMUHEREZA BYARUHANGA KAGABA ::::::::::: APPLICANTS**
- 3. ASIIMWE SULAIMAN**

VERSUS

- 1. BEST KEMIGISA**
- 2. PATRICK KYOMUHENDO KAGORO ::::::::::: RESPONDENTS**

BEFORE: HON. JUSTICE VINCENT WAGONA

RULING

15 The applicant brought this application under Section 98 of the Civil Procedure Act and Order 52 Rules 1 -3 of the Civil Procedure Rules for orders:

- 1. That the plaintiffs’ representatives Mutabazi Lawrence Kyamulesire, Kobwemi Antonio and Yolam B. Kagoro in HCT – 01 – CV – CS – LD 012 of 2013 be substituted by the applicants.**
- 20 **2. That the costs of taking out the application be provided for in the cause.**

The grounds in support of the application are contained in the affidavit in support of the application deponed by the 3rd Respondent in which he contended as follows:

1. That the applicants are among the plaintiffs who filed Land Civil Suit No. 012 of 2012 through their agents **Mutabazi Lawrence Kyamulesire, Kobwemi Antonio** and **Yolamu B. Kagoro**. That the said Mutabazi Lawrence Kyamulesire and Kobwemi Antonio have since died and Yolamu B. Kagoro who is still surviving is ill and unable to testify or appear in court.
2. That Land Civil Suit No. 012 of 2013 cannot continue in the absence of the said representatives. That the plaintiffs appointed the applicants as their agents for purposes of replacing the plaintiffs in Civil Suit No. 012 of 2013.
3. That it is just and fair that the application is granted and the orders it seeks.

10 **Representation:**

The application was filed through **M/s Kaahwa, Kafuuzi, Bwiruka & Co. Advocates** and was not opposed by the Respondents. This is a simple application which in my view can be considered by court ex-parte and I thus enter an exparte order under order 9 rule 11(2) of the Civil Procedure Rules and proceed to consider the same exparte. The applicants did not file the submissions in support of the application thus I decided to determine the application on the basis of the pleadings on record.

Issues

Whether the applicants should be granted an order to substitute the plaintiffs in Land Civil Suit No. 012 of 2013.

Consideration of the application:

It is trite law that substitution, addition or removal of a party to a suit is governed under Order 1 of the Civil Procedure Rules.

Order 1 rule 1 provides thus;

5 *All persons may be joined in one suit as plaintiffs in whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if those persons brought separate suits, any common question of law or fact would arise.*

Order 1 rule 13 adds thus;

Application to add, strike or substitute a plaintiff or defendant.

10 *Any application to add or strike out or substitute a plaintiff or defendant may be made to the court at any time before trial by motion or summons or at the trial of the suit in a summary manner.*

In my view the power granted under rule 13 is wide and extensive and there is no limitation curtailing or restricting the power of court to add, remove or substitute a party to a suit. The overriding consideration should be that such order to add or substitute should not cause any injustice to any of the parties to a suit and should be geared towards ensuring that all questions in controversy are heard and determined by court to finality.

20 The application should not be made malafide or with inordinate delays with intent to delay the hearing of the case and a party to be joined as a plaintiff or defendant should enable court to have the questions in controversy handled by court. The addition or substitution should not be granted as a matter of course but should be premised on the relevancy of such a party to have the case fully investigated and determined by court.

In this application, the applicants contended that they are among the group of the 97 people who had consented to be represented by **Mutabazi Lawrence Kyamulesire, Kobwemi Antonio and Yolam B. Kagoro in Land Civil Suit No. 12 of 2013** to

protect their interests as bonafide occupants on land comprised in Block 71 Mwenge, Plot 4, Land at Rugombe, Kyenjojo District. That the 1st and 2nd plaintiffs have since passed on leaving only the 3rd defendant whose health is not sound. That in order to protect their interests and to have the case heard and disposed off, that the applicant
5 be substituted as the plaintiffs in Civil Suit No. 12 of 2013. That the other members consented to have the applicants substitute the plaintiffs.

I have considered the whole application and the annexure thereto. There are copies of the death certificate on record for the Mutabazi Lawrence Kyamulesire (the 1st plaintiff) and Kobwemi Antonio (the 2nd plaintiff) in Land Civil Suit No. 12 of 2013.
10 I have also scrutinized the medical records of Yolam B. Kagoro who happens to be suffering from multiple illness. I have also paid due regard to the subject being land and the fact that the case has taken long in the court system. Therefore, to quicken the hearing and disposal of the Civil Suit, I find it fair and interests of justice to appoint and substitute the applicants as plaintiffs so that they can follow up on the
15 case and have it disposed off within the shortest time possible.

I therefore find merit in this application and the same is accordingly granted with the following orders;

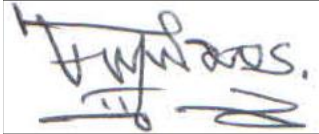
**(a) That the applicants be and are hereby substituted as the plaintiffs in HCT – 01 – CV – CS – LD- 012 OF 2012 in a presentative capacity and
20 accordingly Mutabazi Lawrence Kyamulesire, Kobwemi Antonio and Yolam B. Kagoro are hereby struck out**

(b) That the applicants shall filed an amended plaint if any within 10 days from date of this ruling reflecting this change and have the same served upon the Respondents.

**(c) That HCT – 01 – CV – CS – LD- 012 OF 2012 is according fixed for
25 mentioned and further directions on the 22nd day of February 2023.**

(d) No order is made as to costs.

It is so ordered.

A rectangular box containing a handwritten signature in black ink. The signature is written in a cursive style and appears to read "Vincent Wagona".

Vincent Wagona

5 **High Court Judge**

FORT-PORTAL

6.03.2023