

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT MBALE**

HCT-04-CV- OS - 001-2015

1. **WERE CRISPUS**
(Minor suing through Next Friend
CLARE NANKYA)
2. **WERE MADRINE**
(Minor Suing through Next Friend
OUMA CONSTANCE) :::::::::::::::::::::::::::::::::::PLAINTIFFS
- VERSUS**
1. **THE ADMINISTRATOR GENERAL**
2. **JANE WERE (MRS)**
3. **ABEDNEGO WERE**
4. **GODFREY WERE**
5. **EDWARD WERE** :::::::::::::::::::::::::::::::::::DEFENDANTS

BEFORE: HON. MR. JUSTICE HENRY I. KAWESA

RULING

The Plaintiff brought this action by way of originating summons seeking to recover from the court, an order for revocation of the letters of administration granted to the first defendant and the Estate be redistributed by the court and that 2nd , 3rd, 4th and 5th defendants have unlawfully intermeddled in the Estate of the deceased.

The defendants filed an affidavit in reply and in opposition to the suit.

When the matter came up for hearing on 13.12.2016, counsel for 1st defendant raised a preliminary objection regarding the procedure adopted which is by originating summons.

He was supported by counsel for the 2nd - 5th defendants in the arguments.

Their argument was to the effect that the matter before court was very contentious and could not be resolved by way of originating summons. Referring to case law, they pointed out that originating summons deals with non contentious matters and cannot be used where facts are complex and involve a considerable amount of oral evidence. Reference was made to the cases of *Janet Ntanya V Sauda Sebaduka MSC 11/2011*, and *Nakabugo V Serungogi 1981 HCB 58*.

In response **Counsel Lebu** for the plaintiff referred to the affidavit in rejoinder to argue that the procedure was proper as it related to the rights of a beneficiary of an estate. He pointed out that the matters are simple, and if court desires oral evidence it could be allowed without prejudicing any party.

I have gone through the originating summons and the accompanying affidavit, alongside the affidavits sworn in reply and in rejoinder.

There is no doubt that the matter before court is very contentious.

From the pleadings whereas the plaintiff sues the Attorney General and five others in their capacity as Administrator of the Estate of the deceased, it is contended by defendants that Attorney General (1st defendant) has ceased being such an Administrator. While plaintiff claims that no inventory was filed and no distributions done, the defendants allege the same were done. The plaintiff raises issues of fraud in his reply, which is a matter to be specifically proved by oral and documentary evidence.

From the above facts, the issues raised are not simple.

Under O. 37 of the Civil Procedure Rules, the procedure of originating summons, envisages matters that are simple and straight forward.

It can not suffice where the suit relates to disputed facts and complicated matters of law. Courts have consistently guided that the procedure under originating summons should only apply to simple and straight forward causes.

In ***Vicent Kawinde T/A Oscar Associates V Kato HCCS 4/2007***(unreported) relying on ***Kulsubai V Abdulhussein (1957) EA 699*** it was held that:

“Such procedure was intended so far as we can judge to enable simple matters to be settled by the court without the expense of bringing an action in the usual way, not to enable the court to determine matters which involve a serious questions.”

The procedure was meant to handle simple non complicated matters.

From the pleadings and the submissions herein it is clear that there is no way this court will hear this matter without hearing oral evidence. The matter seems complex. There is need for evidence to prove matters alluded to by all parties.

This is a case where proceedings by originating summons would not suffice to enable court determine the issues in question.

I agree with the defendants that the procedures adopted can not suffice in this matter.

I hold that this was not the kind of matter that ought to have been brought by way of originating summons as it was neither straight forward nor simple, that the plaintiff ought to have proceeded in the ordinary way and still has the opportunity to do so if he is still within time. This is as per **Nakabugo V Serungogi (1981) HCB 58.**

The preliminary objection is accordingly upheld. This is not the kind of matter that ought to have been brought by originating summons, it being not straight forward or simple. The plaintiff ought to have proceeded in the ordinary way, and may yet do so, if he is within time.

Costs to the defendants. I so order.

Henry I. Kawesa

JUDGE

10.02.2017