

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**(FAMILY DIVISION)**

**CIVIL SUIT No. 152 OF 2018**

5 **WALAKIRA JIMMY=====PLAINTIFF**

**Vs**

**1. SSENGENDO LUBWAMA ISAAC**

**2. ZAWEDDE LYDIA**

**(Appointed Administrators of the**

10 **Estate of the Late Nambi Veronica)**

**3. COMMISSIONER LAND REGISTRATION=====DEFENDANTS**

**Before: Hon. Lady Justice Olive Kazaarwe Mukwaya**

### **RULING**

#### **Background**

15 The plaintiff instituted this action against the defendants in their capacity as administrators of the estate of the late Veronica Nambi for a declaration that he is the rightful owner of land comprised in Block 367 Plot 59 Musale Mpogo, an order directing the 1<sup>st</sup> and 2<sup>nd</sup> defendant to hand over the duplicate Certificate of Title to the 3<sup>rd</sup> defendant to register the plaintiff as the registered proprietor and a vesting order for the said land into his names.

#### 20 **Preliminary Objection**

At the commencement of the hearing, the 1<sup>st</sup> and 2<sup>nd</sup> defendants raised a preliminary objection with regard to cause of action. It was their contention that the plaint does not disclose a cause of action against them as provided under Order 7 Rule 11 of the Civil Procedure Rules SI 71-7.

Counsels for the parties were directed to file written submissions. The defendants counsel filed written submissions in support of the said preliminary objection however counsel for the plaintiffs did not file a response.

### **Issue**

#### **5 Whether the plaint discloses a cause of action against the 1<sup>st</sup> and 2<sup>nd</sup> defendants?**

Under O7 r 11(a) of the Civil Procedure Rules, a plaint may be rejected by the court if it does not disclose a cause of action. The Court of Appeal in Kapeka Coffee Works Ltd V NPART CACA No.3/ 2000 held that in determining whether a plaint discloses a cause of action, the court must look only at the plaint and its annexures if any and nowhere else.

- 10 In order to prove there is a cause of action, the plaint must show that the plaintiff enjoyed a right; that the right has been violated; and that the defendant is liable. If the three elements are present, a cause of action is disclosed and any defect or omission can be put right by amendment. See Tororo Cement Co Ltd V Frokina International Ltd Civil Appeal No. 2/2001.

- Mr. Bagonza, Counsel for the defendants submitted that on perusal of the plaint, the plaintiff  
15 instituted the suit against the 1<sup>st</sup> and 2<sup>nd</sup> defendants as appointed administrators to the estate of the Late Veronica Nambi. He attached a Certificate of No Objection and a copy of minutes of a family meeting held at the Administrator General's office to prove that they had indeed been nominated by family members to be administrators of the deceased's estate. He submitted that the 1<sup>st</sup> and 2<sup>nd</sup> defendants are not administrators of the estate of the Late Veronica Nambi as they  
20 do not hold any letters of Administration.

- Further, counsel referred this court to Paragraph 5(iv) of the plaint where the plaintiff pleads that he purchased the said suit land from the daughters of the deceased. Mr. Bagonza submitted that the 1<sup>st</sup> and 2<sup>nd</sup> defendants were not privy to this contract of sale of land and therefore could not be dragged to court to enforce the plaintiff's rights since they have no rights over the said land and  
25 are not administrators of the estate of the daughters of the Late Veronica Nambi from whom the plaintiff bought the suit land.

The defendant's Counsel concluded his submissions by pointing out that in the instant case, the 1<sup>st</sup> and 2<sup>nd</sup> defendants are not administrators of both estates of the deceased or her daughters from whom the plaintiff bought the suit land.

5 The 1<sup>st</sup> and 2<sup>nd</sup> defendants did not violate any rights enjoyed by the plaintiff and he therefore does not have any claim of right against them. It followed that the plaint does not disclose any cause of action as it has failed meet the criteria as laid out in Auto Garage Vs Motokov (1971) EA 514.

Mr. Bagonza prayed that the plaint be rejected and struck out with costs for failure to disclose a cause of action against the 1<sup>st</sup> and 2<sup>nd</sup> defendant.

### **Resolution of Issue**

- 10 The plaintiff in this suit brought this action against the 1<sup>st</sup> and 2<sup>nd</sup> defendant allegedly in their capacity as appointed administrators of the estate of the Late Nambi Veronica. He attached a copy of a letter from the Administrator General's office marked "E" calling the 1<sup>st</sup> defendant to a family meeting and attendance list of the family meeting marked "EE" to the plaint which he referred to as a 'certificate of no objection' as proof of their administrative capacity.
- 15 Section 180 of the Succession Act provides that the administrator of a deceased person is his or her legal representative for all purposes and all the property of the deceased person rest in his or her as such. In the case of Maureen Tumusiime V Macario and another [2006] I HCB 127 Court held that according to Section 180 of the Succession Act, ownership of the property of the deceased vests into the one being appointed administrator or executor through grant of Letters of
- 20 Administration or probate.

According to the plaint, the plaintiff has not produced any letters of administration to support his claim that the 1<sup>st</sup> and 2<sup>nd</sup> defendants were administrators of the estate of the late Nambi Veronica.

- Furthermore, it is clear from the plaint, under paragraph 5 (iii), that the plaintiff did not purchase the suit land from the late Nambi but rather from her three daughters who are also deceased. No
- 25 legal connection has been made between the 1<sup>st</sup> and 2<sup>nd</sup> defendants and this sale of land transaction to give rise to a cause of action.

In conclusion, this court, in agreement with counsel for the defendants, finds that the plaint and its annexures do not disclose a cause of action against the 1<sup>st</sup> and 2<sup>nd</sup> defendants. The preliminary objection is upheld. It follows, that since the claim against the 3<sup>rd</sup> defendant, is for consequential orders following the success of the claim against the 1<sup>st</sup> and 2<sup>nd</sup> defendants, this claim cannot stand independently and is accordingly dismissed.

**I hereby make the following orders:**

1. The plaint discloses no cause of action against the 1<sup>st</sup> and 2<sup>nd</sup> defendants, Mr. Ssengendo Lubwama Isaac and Ms. Zawedde Lydia and hereby struck out.
2. The claim against the 3<sup>rd</sup> defendant which is solely hinged on the existence of a cause of action against the 1<sup>st</sup> and 2<sup>nd</sup> defendant is dismissed.
3. The suit is dismissed with costs.

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**Olive Kazaarwe Mukwaya**

**JUDGE**

**Dated at Kampala this 11<sup>th</sup> day of September 2019**