

**THE REPUBLIC OF UANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**(FAMILY DIVISION)**  
**MISC APPLICATION NO.261 OF 2018**  
***(ARISING OUT OF CIVIL SUIT NO.62 OF 2016)***

**GALUKANDE KIGANDA MICHAEL       =====       APPLICANT**

**VERSUS**

**1. KIBIRIGGE GEORGE WILLIAM**  
**2. MARGARET NAKITTO       =====       RESPONDENTS**  
**3. NABUNYA FLORENCE TAMUZADDE**

**BEFORE: JUSTICE GODFREY NAMUNDI**

**RULING**

This is an Application by a Chamber Summons under **Section 98** of the **Civil Procedure Act Cap 71, Order 26 Rules 1, 2&3** of the Civil Procedure Rules **SI- 71-1** seeking the following orders.

1. The respondent/plaintiffs furnish security for costs.
2. Costs of the application be provided for.

The grounds of this Application were contained in the affidavits in support. The application was opposed by the Respondents through the affidavit in rely deposed by the 3<sup>rd</sup> Respondent.

Counsel filled written submissions in support of their respective cases which I have considered in reaching at this decision.

The Applicant in his evidence states that the 1<sup>st</sup> respondent is of advanced age (over 80 years) and not known to be of sound mind and a retired public servant with no source of income neither does he have any property that can be attached upon failure to pay costs.

The 2<sup>nd</sup> respondent is a widow, 86 years old, a retired primary school teacher with no known source of income nor property and the 3<sup>rd</sup> respondent is a widow of advanced age with no known source of income nor property.

That it is unlikely that the respondents/plaintiffs would be in position to pay the costs of the suit should be decided in favour of the applicant.

Further that the 1<sup>st</sup> respondent is a convict, who was found guilty of forging Letters of Administration by the Chief Magistrate's Court of Masaka, in respect of the estate in issue in this court but he's challenging the administrator of the estate who was legitimately given authority by this court.

He contended that the 1<sup>st</sup> respondent lost matters in respect of the estate namely'-Criminal Case No. 259, Uganda vs. Kibirige George William in Masaka Chief Magistrate's Court, High Court of Uganda at Masaka Misc. Cause 023 of 2015 Kibirige George William vs. Galukande

Kiganda Michael & Anor, Misc. Applications No. 251,252 & 253 of 2016 Kibirige George William vs. Galukande Kiganda Michael & Anor.

That he failed to pay taxed costs of MISC. APPL. No. 252 of 2016. A Copy of certificates of taxation were attached as Annexure "A" & "B". He went on state that, the respondent having failed to pay costs of an application is unlikely to pay costs of the suit should it go in the applicant's favour.

Furthermore that none of the defendants is a child of the deceased therefore have no entitlement in the estate which makes the suit frivolous and vexatious hence enhancing the need for security for costs.

The Respondents contend that the suit is not vexatious, the main issue in the suit is whether the deceased left a Will. The 1<sup>st</sup> respondent is of sound mind but partially blind, he's 76 years and owns land at kalisizo measuring 4 acres valued at approximately Ug. Shs 30,000,000/=. Copies of the purchase agreement were attached as Annexure O1 & O2. That it's true the 1<sup>st</sup> respondent was convicted but he's not the one who forged the letters of administration but he was a just a victim circumstances.

That the late Michael Naluswa Kasule was a clan leader of Ssiga. Muwuluzi IX Kigo, named the 1<sup>st</sup> respondent his heir and successor to his title in his will. That after the will was read the 1<sup>st</sup> respondent was

installed and he took up residence at kayirititi the seat office. That in 1990 the applicant and other beneficiaries in the estate wrote letters to the 1<sup>st</sup> respondent stating that they accepted to sell the portion of land comprised in Buddu 571, Plot 7 which they acquired as beneficiaries and indeed the land was sold to one Sirajje Kabanda.

That all the cases mentioned arose from the forged letters of administration two of which were filed by the applicant.

It's therefore not true that the 1<sup>st</sup> respondent ran to court. That the applicant and other beneficiaries benefited from the forged letters of administration as the 1<sup>st</sup> respondent transferred the land they sold and land comprised in Buddu Block 323 Plot 440 at Kayiritikti to the applicant to the Will of the deceased.

Further that the 1<sup>st</sup> respondent paid a considerable portion of the taxed costs of the cases and is willing to pay the balance of the taxed costs as communicated to the applicant's advocate. Copies of the receipts were attached as annexure "N".

In Rejoinder the Applicant stated that the 1<sup>st</sup> respondent was not in position to depone an affidavit because he is not of sound mind. That he was convicted by a court of law and did not appeal to overturn the decision. That he had three years to pay the costs and he has failed to make good, keeps making promises that he never fulfills. That the

1<sup>st</sup>respondent has no such land, the receipts of payment are a forgery and the applicant wants to avoid scenarios of the past.

### **Resolution by Court**

The issue for determination is whether the respondents should furnish security for costs.

On the above question **Order 26 Rule 1** of the **CPR** provides as follows:-

*“The court may if it deems fit order a plaintiff in any suit to give security for the payment of all costs incurred by any defendant..”*

The following principles must be considered by court while exercising the discretion to order for security for costs.

- I. Whether the applicant is being put to undue expenses by defending a frivolous and vexatious suit;*
- II. That he has a good defence to the suit;*
- III. Only after these factors have been considered would factors like inability to pay come into account?*

Mere poverty of a plaintiff is not by itself a ground for ordering security for costs. If this were so, poor litigants would be deterred from enforcing their legitimate rights through the legal process. (See **Anthony NamboroFabiano Waburo-Lio Versus Henry kaala[1975]HCB 215**)

Oder JSC in G.M. Combined (U) Ltd v. A.K. Detergents (U) Ltd. C.A. No. 34 of 1995 considered the matter of security for costs extensively and citing among others Anthony Namoro (supra), concluded that;

*In a nutshell, in my view, the court must consider the prima facie case of both the plaintiff and the defendant. Since a trial will not yet have taken place at this stage, an assessment of the merit of the respective cases of the parties can only be based on the pleadings, on the affidavits filed in support of or in opposition to the application for security for costs and any other material available at this stage.*

I have looked at the application and all affidavits on this matter. I have also analysed the submissions of Counsel and the law applicable.

The applicant contends that none of the defendants is a child of the deceased therefore have no entitlement in the estate.

The 1<sup>st</sup> respondent is a convict found guilty of forging letters of administration of the estate in issue and he has lost the following cases High Court of Uganda at Masaka Misc. Cause 023 of 2015 Kibirige George William vs. Galukande Kiganda Michael & Anor and Misc. Appl No. 251,252 &253 of 2016 Kibirige George William vs. Galukande Kiganda Michael & Anor.

That all those make the suit frivolous and vexatious.

The respondents contend that the main issue in the suit is whether the deceased left a will. That it's true the 1<sup>st</sup> respondent was convicted but he's not the one who forged the letters of administration but he was a just a victim circumstances. That all the cases mentioned arose from the forged letters of administration two of which were filed by the applicant. It's undisputed 1<sup>st</sup> respondent is convicted found guilty of forging letters of administration in respect of the estate of the late Michael Naluswa Kasule therefore the circumstances which led to his conviction are immaterial. Secondly if indeed the deceased left a Will, naming the 1<sup>st</sup> respondent as heir, he would have followed the right procedure of obtaining for a grant of probate from the High Court basing on the value of the estate property.

The 1<sup>st</sup> respondent has come to this court with unclean hands having engaged inequitable behavior in relation to the subject matter of the litigation and court cannot condone such conduct. I am satisfied the applicant is being put to undue expenses by defending a frivolous and vexatious suit and he has a good defence.

In litigation, the usual position in relation to costs is that the unsuccessful party may be ordered to pay the successful party's recoverable costs. While the defendants may be confident of their

ability to defend the claim, they may nevertheless have concerns about potential difficulties in seeking to recover costs provided for in any order against the claimant. The main purpose of a security for costs order, an interim remedy, is to alleviate that concern by requiring the claimant to pay money into court, or to provide some other form of security, as a precondition to being able to continue with the claim.

The applicant averred that, the respondent failed to pay costs of an application and is unlikely to pay costs of the suit should it go in the applicant's favour.

In response the respondents contended that, the 1st respondent paid a considerable portion of the taxed costs of the cases and is willing to the balance of the taxed costs as communicated to the applicant's advocate. Copies of the receipts were attached as annexure "N"

In rejoinder the applicant contended that the 1<sup>st</sup> respondent had three years to pay the costs and he has failed to make good, keeps making promises that he never fulfills that the receipts are a forgery because 1<sup>st</sup> respondent did not present any accompanying letter from URA declaring the validity of the receipt.

In respect of the above 1<sup>st</sup> respondent having failed to pay the taxed costs of HCMA 252 OF 2015 Kibirige George William vs. Galukande



Kiganda Michael chances are high that the he will not be able to pay costs of the main suit should it be in favour of the applicant/defendant.

I accordingly make the following orders;

- 1) The 1st Respondent is to deposit in this Court Shs 50,000,000/ as security for costs, within 30 day of this order.
- 2) Should he fail to comply with this order, the suit will be dismissed in accordance with the provisions of
- 3) Each party will meet the costs of this application.

**GODFREY NAMUNDI**

**JUDGE**

**DATE03-07-2020**