

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MASAKA
CIVIL SUIT NO. 53 OF 2016

GODFREY SENTONGO (Administrator of ::::::::::::::::::::::::::::::::::: PLAINTIFF
The estate of late Ruth Namyalo Nalongo)

VERSUS

1. KIYIMBA JOSEPH
2. MASAKA MUNICIPAL COUNCIL ::::::::::::::::::::::::::::::::::: DEFENDANTS

Before: Hon. Justice Victoria Nakintu Nkwanga Katamba

RULING ON A PRELIMINARY OBJECTION

THE Plaintiff instituted this suit against the Defendants jointly and severally seeking the following;

- a) A declaration that the 1st Defendant's erection of a permanent structure in an access way habitually used to enter and exit the Plaintiff's commercial building on Plot 23 Ddiba Road, Masaka Municipality (the suit property) and thereby denying the Plaintiff and other members of the public the right of way was unlawful;
- b) An order requiring the Defendant to pull down the building;
- c) An order for compensation to the estate of the late Namyalo by the Defendants for the loss caused to the estate;
- d) An order for restoration to the original state those parts of the estate premises unlawfully tampered with by the 1st Defendant;
- e) An order for payment of special, aggravated and exemplary damages by the Defendants jointly or severally to the estate and beneficiaries thereof, for the defendant's acts;
- f) An order to abate the nuisance of the diminution to the light previously entering the interior of the Plaintiffs' premises before the Defendant erected the building;
- g) A permanent injunction against the Defendant,
- h) Interest on special damages, general damages and costs of the suit;

The Plaintiff's claim is that the suit property is reached through a public lane providing access between the highway and Masaka Municipality Industrial Area and the 1st Defendant owns a commercial building on the opposite lane on Plot 25 Ddiba Road. The suit property became inaccessible upon construction of the 1st Defendant's building on Plot 23A making it unsuitable for commercial/industrial habitation. The 1st Defendant erected the building in a planning area fraudulently purporting to have obtained an approved building plan, with the intention of blocking a public way while the 2nd Defendant abetted the said acts and failed to take immediate steps to stop them.

In his Written Statement of Defence, the 1st Defendant denied the allegations in the Plaint and stated that he is the registered proprietor for the land comprised in FRV 997 Folio 21 Plot 23A Ddiba Street Masaka which he was offered after complying with all legal and financial requirements. His construction works have not in any way encroached on the Plaintiff's land neither have they impeded the Plaintiff's business.

The 2nd Defendant denied the claim and contended that she is not liable for any acquisition, construction and/or development of the suit land and has exercised her statutory obligation as far as construction of the suit land is concerned.

The 1st Defendant raised a preliminary point of law that this suit is improperly brought by the Plaintiff in violation of the law that where there are multiple/more than one administrator, they can only validly act for and on behalf of the estate if they act jointly as well as the law on representative suits under Order Rule 8(1) of the Civil Procedure Rules SI 71-1.

Counsel for the 1st Defendant submitted that there are five joint administrators and the Plaintiff brought the suit solely seeking remedies on behalf of the estate which is in contravention of the law of succession that joint administrators must act jointly in order to bind the estate. Counsel cited the Supreme Court case of *Silver Byaruhanga vs Fr. Emmanuel Ruvugwaho & Anor SCCA No. 09 of 2014*. Counsel further argued that the Plaintiff stated that he brought the suit on behalf of all the beneficiaries whereas he did not

comply with provisions of Order 1 Rule 8 and Order 7 Rule 4 of the Civil Procedure Rules. Counsel prayed for the suit to be dismissed for being incompetent and illegally before court.

The Plaintiff in his submissions argued that the powers of administrators under Section 272 of the Succession are equally shared by each administrator individually and also collectively. It was his submission that being administrator and beneficiary means that he has a contingent interest in the suit property with the right to bring an action to protect it. The suit was filed in the Plaintiff's personal capacity and as administrator with a duty to protect the estate not in a representative capacity.

Consideration of the preliminary objection:

The 1st Defendant seeks to challenge the suit on grounds that it was improperly brought by the Plaintiff without authority to represent the other administrators and beneficiaries.

The 1st Defendant seeks to rely on Order 1 Rule 8 of the Civil Procedure Rules which provides for representative actions and makes it mandatory for any person or persons instituting or defending an action on behalf of several other interested parties, to have written authority from those parties.

In the instant case, the Plaintiff is an administrator for the estate of the late Ruth Namyalo Nalongo and he is also a beneficiary to the estate. The Plaintiff brought the suit to protect and preserve the estate and in his submissions, he relied on Section 272 of the Succession Act to argue that the powers of administrators to preserve an estate are shared equally by each individual administrator and the acts of one administrator are binding on all administrator as long as they are performed to preserve and protect the estate.

Section 272 of the Succession Act provides that, “*When there are several executors or administrators, the powers of all may, in the absence of any direction to the contrary, be exercised by any one of them who has proved the will or taken out administration.*”

The effect of this provision is to allow one of the administrators who has taken out letters of administration where several administrators were appointed by the family and confirmed by

the Administrator General to take out administrators, or where the Will provides several executors but only one has proved the Will and obtained a Grant of Probate; to perform the powers of the administrators or executors.

I therefore find that with due respect to the Plaintiff, Section 272 of the Succession Act does not allow an administrator to exercise duties on behalf of all other administrators who have taken out a grant of letters of administration.

Section 180 of The Succession Act provides that an administrator of a deceased person is his or her legal representative for all purposes, suggesting therefore that a legal representative is a person to whom a grant of letters of administration has been made under The Succession Act, *section 2 (k) of The Civil Procedure Act* on the other hand defines a "Legal Representative" as a person who in law represents the estate of a deceased person.

The above provisions give an administrator powers to represent the estate including its beneficiaries. By acting in their powers as administrators, the administrators are representing the estate and the beneficiaries and therefore all suits instituted or defended by administrators are representative in nature. The grant of letters of administration gives administrators powers to represent and I find that this amounts to and is an equivalent of the written authority that would be required of other people instituting or defending representative actions under Order 1 Rule 8 of the Civil Procedure Rules.

I therefore find that an administrator instituting or defending a suit in their capacity as administrator for the protection of the estate would not require the written authority in Order 1 Rule 8 of the Civil procedure Rules. As I have already stated, the Plaintiff in the instant case is not only an administrator but also a beneficiary to the estate of the late Ruth Namyalo. A beneficiary has an interest in the estate and thus gives them a right and powers to institute a suit to protect and preserve their interest. The question for the court to answer is whether an action brought by a beneficiary is a representative action that should be filed in accordance with the rules of Order 1 Rule 8 Civil Procedure Rules?

It is now established law that beneficiaries have locus to institute actions to defend and preserve the estate. The Supreme Court on establishing locus standi for beneficiaries in *Israel Kabwa v. Martin Banoba Musiga, S. C. Civil Appeal No. 52 of 1995* held that beneficiaries have a right to sue on the basis of their interest in the estate.

Beneficiaries have powers to institute and defend actions meant to preserve and protect the estate and the suit by its nature would be for the benefit of all beneficiaries whether it is instituted to represent them all or the beneficiary has instituted it solely. This is because until the estate has been distributed, their particular share cannot be ear marked and therefore an action brought by one beneficiary is in its nature for the interest of all other beneficiaries.

I therefore find that a beneficiary to an estate which has not been distributed has power to institute an action without requiring the written authority in Order 1 Rule 8 of the Civil Procedure Rules as the action would in its nature be for the benefit of the estate and the reliefs sought would be enjoyed by the entire estate. An administrator or beneficiary has powers to represent the estate in a suit provided the suit is for the preservation and protection of the estate and the reliefs sought are not for the benefit of the individual but rather for the benefit of the estate and its beneficiaries.

In the result, the 1st Defendant's preliminary objection is hereby disallowed.

The matter will proceed to be determined on its merits.

I so order.

Dated at Masaka this 3rd day of December, 2021

Signed;



Victoria Nakintu Nkwanga Katamba

Judge