

THE RUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(FAMILY DIVISION)
CIVIL SUIT NO. 146 OF 2021

KALIBBALA JOHN

**(Heir and beneficiary of the Estate of
the late Musoke John Kalibbala).....PLAINTIFF**

VERSUS

- 1. MUGOYA HARRIET**
- 2. NAKAWEESI CAROL**
- 3. NAMAGANDA SARAH**
- 4. SEMANDA DERRICK**
- 5. NABUUMA BARBRA**
- 6. SSEMPIJJA ALLAN**
- 7. NAMUWULYA VIOLET.....DEFENDANTS**

Before: L.J.Ketrah Kitariisibwa Katunguka.

Judgment.

Introduction:

1. Kalibbala John (herein called **‘the plaintiff’**) sued Mugoya Harriet, Nakaweesi Carol, Namaganda Sarah, Semanda Derrick, Nabuuma Barbra, Ssempijja Allan and Namuwulya Violet (herein called **‘the defendants’**) for; orders directing the 1st defendant or the defendants to give the plaintiff his share on properties of the estate of his late father; an order for sale of the suit property in order for the plaintiff to access his share or surveying off and demarcation off of the plaintiff’s share for his benefit; a declaration that the plaintiff is entitled to share in the estate of his late father, a declaration that the conduct and insinuation of the 1st defendant that the plaintiff is not entitled to a share from the said estate are un constitutional and contrary to provisions of the law; an order directing that the defendants pay the plaintiff his share of the monthly rent collected from the suit property from 2015 to date; a permanent



injunction against eviction; general damages; costs of the suit and any other remedy court may deem fit.

The case:

2. The plaintiff is a biological son and heir to the late Musoke John Kalibbala (herein called 'the deceased') who passed away on the 8th day of August 2015; he is a biological brother to the 2nd to the 7th defendants; the 1st defendant is the mother of the 2nd to 7th defendants, and a step mother to the plaintiff; the deceased left behind twelve rental shops and a residential house on approximately 17 decimals at Kansanga Town Centre, Gaba road Makindye division, Kampala district;
3. His mother a one Namusisi Moreen while still cohabiting with the deceased purchased the suit land and handed possession to her husband (the deceased); since the death of the deceased, the 1st defendant has refused to give the plaintiff a share in the estate yet the plaintiff was installed as an heir during the last funeral rites and has been denied access to the suit property and the deceased left a Will; he also claims a share in the estate and a share in the monthly proceeds collected as rent of Ugs. 5,000,000/= from the said premises from 2015 to date.
4. The defendants filed a joint written statement of defence denying the claims by the plaintiff; the suit is premature and does not disclose any cause of action; the 1st defendant who is the mother of the 3rd to the 7th defendants got married to the deceased in 1986; the plaintiff is a beneficiary to the estate, but he is not the heir as no funeral rites have yet been performed; the late Musoke John Kalibbala before his demise purchased the suit property on Gaba road, Kasanga Town and rental premises so it does not belong to the mother of the plaintiff;
5. The plaintiff attempted to dispose of the suit property; they admit that a monthly rent of UGX 2,000,000/= is collected from the estate and utilized to maintain the family home; while the balance is shared amongst the beneficiaries, including the plaintiff; the residential house is matrimonial property which all the beneficiaries are entitled to as their home.



Representation:

6. The plaintiff is represented by counsel Sempebwa Isaac of M/s Deric Advocates & Solicitors; while the defendants are represented by counsel Katerega Jennifer of M/s JN Katerega Advocates & Legal Consultants .
7. Before hearing of the suit, counsel for the defendant filed written submissions raising a preliminary objection to the effect that the plaintiff's plaint is frivolous and vexatious as it does not disclose a cause of action against the defendants;
8. It is trite law that a point of law can be set down for hearing and disposed of at any time before hearing (see *Order 15 rule 2 of the Civil Procedure Rules* and *Order 6 rule 28 of the Civil Procedure Rules*.)

Issues arising out of the preliminary objection:

Both counsel submitted on the following issues.

1. Whether the plaint in civil suit No.146 of 2021 is frivolous and vexatious?
2. Whether the plaint in civil suit No.146 of 2021 discloses a cause of action against the defendants?

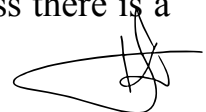
Court's determination of preliminary objection:

I shall consolidate the two issues into one issue as bellow:

Whether the plaint in civil suit No.146 of 2021 is frivolous, vexatious and discloses no cause of action against the defendants.

Defendants' submissions:

9. Counsel for the defendants cited Order 6 Rule 30 of the Civil Procedure Rules and submitted that the plaint is frivolous, vexatious and only intended to waste court's time as it does not disclose a cause of action; the plaint is illegitimate as it not only offends, but is also intended to make a mockery of the law of succession; aims at no practical relief from court; whereas the plaintiff may be entitled to a share in the estate of the deceased, it is trite that his share cannot be given to him unless there is a



legal administrator of the estate; otherwise it would amount to intermeddling of the estate;

10. That according to section 180 and 191 of the Succession Act, one can only attempt to establish a right to the property of the deceased after letters of administration have been granted by a competent court; court cannot order that the estate property be divided before a grant of letters of administration; there is no cause of action displayed by the pleadings against the defendants because they are not administrators but beneficiaries so can not be accused of denying the plaintiff his share;

Plaintiff's submissions.

11. For the plaintiff, counsel cited *Auto Garage V. Motokov* [1971] E.A 514, at 519 and *Mulindwa Birimumaso v. Government Central Purchasing Corporation* C.A.C.A No.3 of 2022; and submitted that as a beneficiary to the estate of the late Musoke John Kalibbala he has a right to the estate of the deceased; being a beneficiary and the to heir to the deceased, he has been denied access to the estate, has not been receiving a share in the rent proceeds out of the estate of his late father; yet the defendants admit in their defence to receiving monthly rent from the estate amounting to 2,000,000/=
- Counsel for the defendants filed written submissions in rejoinder which I have considered.

Court's decision:

12. **Order 6 rule 1 (1)** of the Civil Procedure Rules provides: *'Every pleading shall contain a brief statement of the material facts on which the party pleading relies for a claim or defence, as the case may be.'* **Order 7 rule (1)** provides :
- 'The plaint shall contain the following particulars—(a) the name of the court in which the suit is brought; (b) the name, description and place of residence of the plaintiff, and an address for service; (c) the name, description and place of residence of the defendant, so far as they can be ascertained; (d) where the plaintiff or defendant is a minor or person of unsound mind, a statement to that effect; (e) the facts constituting the cause of action and when it arose; (f) the facts showing that the court has jurisdiction; (g) the relief which the plaintiff claims; (h) where the plaintiff has allowed a setoff or relinquished a portion of his or her*

claim, the amount so allowed or relinquished; and (i) a statement of the value of the subject matter of the suit so far as the case admits'.

13. Black's Law dictionary 11th Edition defines '**material**' as '*having some logical connection with the consequential facts...of such nature that knowledge of the item would affect a person's decision-making*'; Necessary for the purpose of formulating a complete cause of action; (See: *Bruce v Odhams Press Ltd. [1936 1 KB at p. 697]*).
14. **Odgers' Principles of Pleading in Civil Actions in the High Court of Justice, Twenty-Second Edition (1981) by D. B. Casson and I. H Dennis at page 88:states that;** "*The function of pleadings then is to ascertain with precision the matters on which the parties differ and the points on which they agree; and thus to arrive at certain clear issues on which both parties desire a judicial decision. In order to attain its object, it is necessary that the pleadings interchanged between the parties should be conducted according to certain fixed rules... The main purpose of these rules is to compel each party to state clearly and intelligibly the material facts on which he relies, omitting everything immaterial, and then to insist on his opponent frankly admitting or explicitly denying every material matter alleged against him. By this method, they must speedily arrive at an issue. Neither party need disclose in his pleading the evidence by which he proposes to establish his case at trial. But each must give his opponent a sufficient outline of his case. "*
15. A cause of action is defined as every fact which is material to be proved to enable the plaintiff succeed or every fact which if denied, the plaintiff must prove in order to obtain a judgment.(**Cooke vs Gull LR 8E.P 116, Read v Brown 22 QBD P.31**); '*a group of operative facts giving rise to one or more bases for suing; a factual situation that entitles one person to obtain a remedy in court from another person*'(see Balack's Law Dictionary supra);
16. **In Major General David Tinyefunza vs. Attorney General of Uganda SCConst. Appeal No. 1 of 1997** cause of action was defined as; "*every fact, which, if traversed, it would be necessary for the Plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts which taken with the law applicable to them*

gives the Plaintiff a right to relief against the Defendant... But it has no relation whatever to the defence which may be set up by the Defendant, nor does it depend upon the character of the relief prayed for by the Plaintiff. It is a media upon which the Plaintiff asks the court to arrive at a conclusion in his favour. The cause of action must be antecedent to the institution of the suit."

17. The plaint must show that the plaintiff had a right, and that right was violated, resulting in damage and the defendant is liable. (see ***Tororo Cement Co. Ltd v Frokina International Limited SCCA No.2 of 2001***; and ***Auto Garage vs Motokov (NO 3) (1971) EA 514***); Court therefore must look at the averments in the plaint along with any attachments if any and no evidence is required; (see: The East African Court of Appeal decision in the case of ***Jeraj Shariff & Co vs. Chotai Fancy Stores [1960] 1 EA 374***). **Winlock versus Maloney [1965] 2 All ER 871.**

18. I have carefully examined the plaintiff's prayers in the plaint; he as a son seeks a share in the estate of the late Musoke John Kalibbala; any beneficiary to an estate of a deceased person must bring a claim against the Administrator to the estate; the plaintiff does not state that the defendants are holders of Letters of Administration for the estate of the late Musoke John Kalibbala;

19. An administrator is defined by section 2(a) of the Succession Act cap. 162, as a person appointed by court to administer the estate of a deceased person when there is no executor. **Section 191 of the Succession Act** provides that except as hereafter provided, but subject to section 4 of the Administrator General's Act, no right to any part of the property of a person who has died intestate shall be established in any court of justice, unless letters of administration have first been granted by a court of competent jurisdiction.

20. **Section 264 of the Succession Act** provides that after any grant of probate or letters of administration, no person other than the person to whom letters have been granted shall have power to sue or prosecute any, or otherwise act as a representative of the deceased until the letters have been recalled or revoked; the position that no one shall deal with the estate of a deceased intestate unless he/she has letters of administration

was considered in *John Kihika & Anor V. Absolom Tinkamanyire C.A.C.A No.0086 of 2014*;

21. The estate of the late Musoke John Kalibbala can only be distributed by a legally appointed administrator; the plaintiff in his prayers in the plaint; seeks this court to direct the defendants who are not the appointed administrators to give him a share on the estate property, an order of sale of the said property; and order directing the defendants to pay his monthly share in the rent collected from the property from 2015 to date; the defendants do not have the capacity to violate the rights of the plaintiff so he has no right to sue them; if the estate has no letters of administration there can not be any distribution/sharing;
22. Before I take leave of the matter the defendants admit that they are sharing the balance of the rent money after the rest has been applied towards maintenance of the home; **Section 57 (3)(e) of the Succession (Amendment) Act No.3 of 2022** provides that;
"A person may, before grant of letters of administration or probate, take possession of the property of the deceased person for the purposes of receiving money or other funds belonging to the deceased person."; such a person who takes possession of the estate of the deceased person is required to immediately report particulars of the property and the steps taken to the Administrator General or his or her agent. (see; **Section 57(5) of the Succession (Amendment) Act**;
23. If at all the defendants are in possession of the estate of the deceased; and the plaintiff feels aggrieved by the conduct of the defendants in the management of the estate; the plaintiff's redress is to reach out to the office of the Administrator General or his agent and file a complaint as the law requires under **Section 57(6) of the Succession (Amendment) Act** that; "*A person may seek redress from the Administrator General or his or her agent if that person has reason to believe that the person who has taken possession of the estate of a deceased person pursuant to subsection (3) has caused loss or damage to the estate.*"

The defendants are sharing part of the estate are intemeddling in the estate contrary to section 268 of the Succession Act;



I would in the premises find that the plaint in civil suit No.146 of 2021 is frivolous, vexatious and discloses no cause of action against the defendants.

24. It is trite that a preliminary objection raises a pure point of law, which if argued successfully may dispose of the whole matter (see: **Mukisa Biscuit Manufacturing Co. Ltd V. Went End Distributors Ltd [1969] E.A 696**); this is such a preliminary point of law for a plaint without cause of action is no plaint;

25. **Order 7 rule 11(a), (d) and (e) of the Civil Procedure Rules provides that** the plaint shall be rejected where it does not disclose a cause of action; where the suit appears from the statement in the plaint to be barred by any law; and where the suit is shown by the plaint to be frivolous or vexatious.

The preliminary objection is sustained, the plaint in CS 146/2021 therefore is struck out for failure to disclose a cause of action, being frivolous and vexatious and for being barred by section 191 of the Succession Act;

In the premises, the suit is dismissed with costs.



Ketrah Kitariisibwa Katunguka

Judge

13/02/2023

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