

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

FAMILY DIVISION

MISCELLANEOUS APPLICATION NO. 0860 OF 2022

(All Arising out of Civil Suit No. 0133 of 2020)

(All Arising from Administration Cause No. 636 of 2013)

**1. KALUNGI SHAMIM
2. MUGISA JACOB LUCKY:..... APPLICANTS**

VERSUS

KAGANDA HOPE LOY:..... RESPONDENT

Before: Lady Justice Ketrach Kitariisibwa Katunguka

Ruling

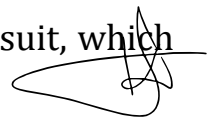
Introduction:

- 1.** This Application is brought by way of Notice of Motion by Counsel for the Applicant for grant of orders that;
 - a. The Plaintiff in Civil Suit No. 133 of 2020 be substituted with the 1st Applicant;
 - b. The 2nd Applicant be added as a 2nd Plaintiff in Civil Suit.
 - c. The Plaint in Civil Suit No. 133 of 2020 be amended in paragraph 3 (d) and the applicants be granted administration of the deceased's estate.



d. Costs of the Application be provided for.

2. The grounds of the Application are contained in the Notice of Motion and Affidavit in Support deposed by Kalungi Shamim (herein called the 1st Applicant) and briefly that; the Plaintiff (Kajumba Jackline) filed Civil Suit No. 133 of 2020 after which she left the Country and is now residing in United Arab Emirates in Dubai and is not about to return to the country; the 1st Applicant is the biological mother to the Plaintiff and the 2nd applicant; she is a widow to the late Mugisa Lucky Patrick who passed on in April 2013; the deceased was survived by two widows the 1st applicant and the Respondent whereby the Respondent applied for and was given a grant solely to the estate of the deceased;
3. The Respondent has put to waste the estate of the deceased by neglecting to distribute it to the rightful beneficiaries; Civil Suit No.133 of 2020 was filed seeking to revoke the Respondent's grant and the Plaintiff therein is not about to return in the country; it is just fair and equitable that an order prayed for be granted;
4. The Application is supported by a copy of the letter of authority, a copy of a grant, a copy of the intended amendment of the Plaintiff;
5. The Application is opposed by Kaganda Hope Loy (the Respondent) who filed an affidavit in reply and contends that; she intends to raise a preliminary objection on the incompetence of this Application as it clearly demonstrates an abuse of court process and a waste of court's time; HCCS No. 133 of 2020 was filed against her by Kajumba Jackline the Plaintiff in the main suit, which



had several declarations and orders in relation to the Administration of the estate of the late Mugisa Lucky Patrick;

6. The subject matter of the suit goes to the core facts where the Plaintiff in the main suit is greatly involved and substituting the Plaintiff with different parties would in itself affect the substantial matter of the suit; she filed a counterclaim in the main suit specifically against the Plaintiff to which she has relation to the subject matter of the suit; the physical absence of the Plaintiff from Uganda does not preclude the court proceedings from going forth; this Application is frivolous, incompetent, unmeritorious and a waste of court's time; she prays that this Application be dismissed and costs provided for;

Representation;

7. When the matter came up on 20th December, 2022 the Applicants and their counsel were absent; the respondent was absent; counsel Rwabwogo Richard appeared for the respondent; the record shows the applicants are represented by M/S Sebanja & Co. Advocates who filed the application with submissions; the submissions and those of counsel for the respondent have been considered.

The issue for consideration is whether the application should be granted.

8. Order 1 rule 1 of the Civil Procedure Rules provides; *All persons may be joined in one suit as plaintiffs in whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if those persons brought separate suits, any common question of law or fact would arise.*

9. **Order 1 rule 13** of the Civil Procedure Rules S.I 71-1 provides; ‘Any application to add or strike out or substitute a plaintiff or defendant may be made to the court at any time before trial by motion or summons or at the trial of the suit in a summary manner;

10. Court in **Mudaki and 2 Others v Kemigisa and Another [2023] UGHCCD 49**; held that; *“The overriding consideration should be that such order to add or substitute should not cause any injustice to any of the parties to a suit and should be geared towards ensuring that all questions in controversy are heard and determined by court to finality. The application should not be made malafide or with inordinate delays with intent to delay the hearing of the case and a party to be joined as a plaintiff or defendant should enable court to have the questions in controversy handled by court. The addition or substitution should not be granted as a matter of course but should be premised on the relevancy of such a party to have the case fully investigated and determined by court.”* I hold the same view.

11. Substitution should only be allowed in the interest of justice to enable all questions settled in the matter with an end result of avoiding multiplicity of suits; and it should be justified. (see Yahaya **Kariisa v. Attorney General & Another, S.C.C.A. No.7 of 1994 [1997] HCB 29**). In this application, the ground on which the applicants seek to be substituted with the plaintiff in civil suit no.133 of 2020 is that the plaintiff has left the country and is now residing in United Arab Emirates in Dubai; and is not about to return. However, on court record there is no evidence adduced by the applicants to prove that the plaintiff to wit Kajumba Jackline in civil suit No.133 of 2020 is outside the jurisdiction of this court.



12. Counsel for the respondent during hearing on 20/12/2022 brought it to this court's notice that whereas the applicants are claiming that the plaintiff in the main suit is away and unlikely to return, the same plaintiff has filed civil suit no.425 of 2022 in this court under the same cause of action; in support of counsel's submission, on record is a copy of a written statement of defence of civil suit no.425 of 2022 wherein the plaintiffs are Kajumba Jackline Lucky and Mugisa Jacob filed against Kaganda Hope Loy as the defendant;
13. This application to have the plaintiff in civil suit No.133 of 2020 substituted with the applicants was filed on 16/9/2022;it is mainly premised that the plaintiff is out of jurisdiction; there is no such proof; civil suit no.425 of 2022 which contains the same plaintiff and another was filed on 31/10/2022; I agree with counsel for the respondent that this is an abuse of court process.
14. In the premises, I find no credible evidence to support the applicants' allegations that the plaintiff in civil suit no.133 of 2020 is out of Uganda with no intention of returning to the country.

The application is dismissed with costs to the respondent.



Ketrah Kitariisibwa Katunguka

Judge

28/04/2023

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