

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**(LAND DIVISION)**  
**CIVIL SUIT NO.412 OF 2018**

**SARAH NATOLO:.....PLAINTIFF**

*(Suing as Administratrix & beneficiary of  
the estate of late Ayill Drucillar Namaganda)*

**VERSUS**

**1. NSUBUGA FRANCIS**

**2. BUGANDA LAND BOARD**

**3. THE COMMISSIONER LAND REGISTRATION:.....DEFENDANTS**

**RULING**

**BEFORE: HON JUSTICE HENRY I. KAWESA**

The Plaintiff in her Administratrix capacity brought this suit against the Defendants for recovery of land and trespass on **land comprised in Block 253 Plot 387 at Kyadondo Makindye-Lukuli.**

At one of the appearances, Counsel for the Plaintiff informed Court that the Plaintiff passed on. He then prayed that Court permits the deceased Plaintiff to be substituted by her biological children, in the absence of Letters of Administration, to enable the hearing of the matter proceed. Counsel relied on *Israel Kabwa versus Martin Banoba S.C.C.A. No.52 of 1995.*

Both Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants objected to the aforesaid prayer on ground that the persons proposed to replace the deceased Plaintiff are her children, and yet the Plaintiff did not sue in her personal capacity, but as an Administratrix of the estate of the late Ayill Drucillar Namaganda. It was their submission that the said persons would have no *locus*; and that the suit abated unless there is an Administrator of the estate of the late Ayill Drucillar Namaganda to revive it.

In rejoinder, Counsel for the Plaintiff argued that the deceased Plaintiff was a niece of the late Ayill Drucillar Namaganda that is, related by blood to the late Ayill Drucillar Namaganda who was a Namasole (*queen mother*). That the late Ayill Drucillar Namaganda had personal effects and possessed official properties to the Kingdom; and that Letters of Administrations to the deceased Plaintiff were to administer personal private effects of the late Ayill Drucillar Namaganda. That the deceased Plaintiff being a blood relative to the late Ayill Drucillar Namaganda, she was an entitled beneficiary of the late Ayill Drucillar Namaganda's private estate.

Further, that the deceased Plaintiff was a customary heir to the estate of the late Ayill Drucillar Namaganda, a reason why Court requested for her relatives in order to have efficacy of her personal estate. It was his view also that the onus is to look into the protection and preservation of the said estate, and that is by asking, whether the

deceased's estate should be abandoned simply because there are issues for determination.

I have addressed myself to the case of *Israel Kabwa versus Martin Banoba* (*supra*). Therein, the *Supreme Court* held that;

*“a beneficiary of an estate can sue to protect his or her interest before obtaining Letters of Administration”.*

This position is only useful in determining whether a beneficiary has *locus*, and may be useful as such in determining whether a deceased Plaintiff can be substituted with a beneficiary of his or her estate. I shall however, return to that question later.

There is consensus *“that any existing proceedings, properly constituted within the limitation period, should be allowed to continue for or against the party to whom the relevant right or obligation has been transferred in law...”* *Yorkshire Regional Health Authority versus Fairclough Building Ltd [1996] 1 WLR 210*. The procedure illustrative of this view is under O.24 r3(1) of the Civil Procedure Rules, which provides that:

*Where....a sole surviving Plaintiff dies and the cause of action survives or continues, the Court, on an application made for that purpose, shall cause the legal representative of the deceased Plaintiff to be made a party and shall proceed with the suit.*

It suffices to add also that a deceased party/Plaintiff can also be substituted with a beneficiary, without Letters of Administration, provided the conditions under Section 222 of the Succession Act Cap 162 are satisfied. The said section provides that:

*When it is necessary that the representative of a person deceased is made a party to a pending suit, and the executor or person entitled to administration is unable or unwilling to act, Letters of Administration may be granted to the nominee of a party in the suit, limited for the purpose of representing the deceased in that suit...*

It is evident under the aforesaid provisions that a legal representative or a nominee of a party who substitutes a deceased Plaintiff acquires the same *locus standi* in the pending suit as was with the deceased Plaintiff because of the existence of an identity of parties in relation to the cause of action.

In this case, the deceased Plaintiff sought to be substituted instituted the pending suit as a legal representative of the estate of late Ayill Drucillar Namaganda. The implication, therefore, is that the said suit was brought on behalf and for the benefit of the estate of the late Ayill Drucillar Namaganda.

The persons proposed to substitute the deceased Plaintiff with are her children and, thus, beneficiaries of her personal estate, not

beneficiaries of the estate, which the deceased Plaintiff administered, for whose benefit and behalf she instituted the pending suit.

In view of the aforesaid provisions, it is evident that there is no legal representatives of the estate of the late Ayill Drucillar Namaganda. For that case also, it would be inconceivable to argue that there is an Administrator of the said estate who is unable or unwilling to act for Section 222 of the Succession Act Cap 162 to apply.

In summation, all provisions above are inapplicable. This is similar to stating, as the 1<sup>st</sup> and 2<sup>nd</sup> Defendant's Counsel argued, that the proposed persons shall lack *locus standi* in the pending suit, if permitted to substitute the deceased Plaintiff, owing to the absence of the identity of parties in relation to the cause of action. As such, even **Israel Kabwa versus Martin Banoba** (*supra*) is not useful.

For the reasons above, this Court hereby declines the application to substitute the deceased Plaintiff with persons as proposed by their Counsel, unless otherwise rectified through the appointment and substitution of the rightful Administrix of the estate of the late Ayill Drucillar Namaganda. The suit stands abetted on account of the death of Sarah Natolo.

The application is dismissed.

I award no order to costs.

I award no order to costs.

I so order

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Henry I. Kawesa

**JUDGE**

05/05/2021

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Henry I. Kawesa

**JUDGE**

05/05/2021

05/05/2021:

Nsamba Geoffrey for the family of the late Natolo.

Mukwaya David for the 2<sup>nd</sup> Defendant.

Kyadondo Mark for the 2<sup>nd</sup> Respondent.

Court:

Ruling duly delivered.

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Henry I. Kawesa

**JUDGE**

05/05/2021