

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
(LAND DIVISION)**

**MISC. APPLICATION NO 1702 OF 2019**

5 **(Arising from Civil Suit No. 71 of 2018)**

**1.TEDDY NANZIRI (Administrator of the Estate  
Of the late Siriri Mukasa)**

**2.KAJUMBA JOSEPH HALLEN**

10 **3.LUKANGA GODFREY AUGUSTINE**

**4.NAMUSISI GRACE ROSE-----**

**APPLICANTS**

**V**

15 **1.MUTEBI ENOCK**

**2.KAGENDA JOSHUA Administrators of the Estate of the late Eva  
Balimpitani**

**3.KASITA HENRY**

**4.OKELLO JIMMY CANDWONG**

20 **5.JIMKO ESTATES (U) LTD**

**6.ASHABA JUSTUS**

**7.GEORGE WILSON JEMBA**

**8.BAZAALE RONALD**

**9.NAJJINGO CATHERINE**

25 **10.EMMANUEL RUKUNDO**

**11.KIA FIONA MAJURINE**

**12.ACHIPA LUCY MARION**

**13.OGWAL SAMUEL**

**14.NAMIRIMO LYDIA BAKUMPE**

**15.JANE OKELLO AKELLO**

**16.NAMANYA BENSON**

**17.NANKYA SSEMANOBE KAGIMU SUSAN**

5 **18.FINANCE TRUST BANK LIMITED**

**19.IZIMBA TIMOTHY**

**20.KYOKUZARWA DOREEN**

**21.ATUHAIRE ESTHER**

**22.ISMAIL BIDANDI**

10 **23.OKONYA STANLEY**

**24.COMMISSIONER FOR LAND REGISTRATION-----**

**RESPONDENTS**

**Before: Hon. Lady Justice Olive Kazaarwe Mukwaya**

15 **RULING**

The Applicants, Teddy Nanziri (Administrator of the Estate of the Late Siriri Mukasa), Kajumba Joseph Hallen, Lukanga Godfrey Augustine and Namusisi Grace Rose brought this Application by way of Notice of Motion under S.33 of the Judicature Act Cap 13, S. 100 of the Civil Procedure Act Cap 71, O.1 r 10(1), (2) & 13 and O.10 r.14 Civil Procedure Rules SI. 71-1 against the Defendants in Civil Suit No. 71 of 2018 and 19 Others seeking orders that;

1. The 1<sup>st</sup> Applicant be substituted as a Plaintiff in Civil Suit No.71 of 2018.
- 25 2. The 2<sup>nd</sup>, 3<sup>rd</sup> & 4<sup>th</sup> Applicants be added as Plaintiffs in Civil Suit No.71 of 2018.
3. The 6<sup>th</sup> to 23<sup>rd</sup> Respondents be added as Defendants in Civil Suit No.71 of 2018.

4. The Commissioner Land Registration (24<sup>th</sup> Respondent), avails to the 1<sup>st</sup> Applicant certified copies of the white page and instruments for Kyadondo Block 159 Plots 317 to 500 at Namulonge – Balita.
5. The Applicants be granted leave to amend the plaint to cater for the changes sought under the application.

All the Applicants filed affidavits in support of the application. The 1<sup>st</sup> & 2<sup>nd</sup> Respondents did not file affidavits in reply. This Court received affidavits in reply from the 3<sup>rd</sup>, 4<sup>th</sup> & 5<sup>th</sup> Respondents who are Defendants in Civil Suit 71 of 2018. No responses were received from the 6<sup>th</sup> to 23<sup>rd</sup> Defendants.

#### 3<sup>rd</sup> Respondent's Reply.

Mr. Kasita Henry objected to the prayers in the application and averred briefly as follows;

1. The Applicants have no locus to bring this application.
2. Replacing the initial Plaintiffs with the intended Plaintiff(Applicants) goes against the rules of procedure governing addition of parties.
3. The 2<sup>nd</sup>,3<sup>rd</sup> & 4<sup>th</sup> Applicants are aliens to this suit.
4. Application is intended to cure an incurably defective main suit since the Plaintiff in the main suit lacks locus.

#### 4<sup>th</sup> & 5<sup>th</sup> Respondents' Affidavit in Reply

Mr. Jimmy Okello Candwong objected to the motion stated briefly as follows;

1. The 5<sup>th</sup> Respondent purchased the suit land comprised in Kyadondo Block 159 Plot 3 from one Kasita Henry.
2. Prior to purchase, the 5<sup>th</sup> Respondent conducted all the necessary verifications and searches and established the suit land belonged to Kasita Henry.
3. The 5<sup>th</sup> Respondent being a real estate Company bought the suit land from the 3<sup>rd</sup> Respondent and secured its title, subdivided it and sold it to various parties.

4. The 1<sup>st</sup> Applicant having purported to sell the suit property to the late Kimera Matayo Musisi cannot have any interest in the suit property and cannot apply to be joined as a party.
5. The suit property has never been the property of the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Applicants and therefore they cannot seek to join this suit.
6. The substitute of the 1<sup>st</sup> Applicant as Plaintiff in Civil Suit No. 71 of 2018 is not necessary for the determination of the real issues touching the subject matter of the suit.

10 Representation.

Mr. Kyamanywa Edward Cooper brought this application on behalf of the Applicants. Mr. Serwadda appeared for the 3<sup>rd</sup> Respondent and Mr. Sebutta Hamza appeared for the 4<sup>th</sup> and 5<sup>th</sup> Respondents.

15 Counsel for the parties filed submissions on their behalf which I shall not reproduce here but have duly considered.

Background to the Application.

Mr. Kimbugwe Julius, the Plaintiff instituted Civil Suit No.71 of 2018 against; D1, Mutebi Enoch, D2, Kagenda Joshua, D3, Kasiita Henry, D4 Jimmy Okello Candwong, D5, Jimko Estate (U) Ltd and D6 Commissioner Land Registration, jointly and severally for trespass to land, breach of contract, eviction/vacant possession, fraud, a permanent injunction, cancellation of title, general and special damages, interest at Court rate of the damages and costs of this suit. The suit was filed by M/s Rwakafuuzi & Co. Advocates on behalf of the Plaintiff.

According to the Plaintiff, he sued in his capacity as a beneficiary of the estate of the late Kimera Matayo who passed away on the 18<sup>th</sup> October 2012. The late Kimera

Matayo purchased land comprised in Kyadondo Block 159 Plot 3 (the suit land) on the 15<sup>th</sup> September 1983 from Nabingi Teopista, Teddy Nanziri and Namirembe Christine beneficiaries of the estate of the late Siriri Mukasa.

- 5 Mr. Kimbugwe, the Plaintiff claims under the plaint that before his late father Matayo Kimera could get himself registered on the suit land, the 1<sup>st</sup> – 4<sup>th</sup> Defendants fraudulently acquired title to it. His claim against the 6<sup>th</sup> Defendant is for cancellation of title in respect of the suit land since it was acquired (by the Defendants) fraudulently.
- 10 Witten statements of defence were filed by the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants denying the claims and maintaining they had acquired the suit land legally. Under paragraph 13, of the Plaintiff's reply to the Defendants' defence, the Plaintiff contended that he has the locust standi to bring this suit the way he did as the suit land belongs to the estate of the late Matayo Kimera, his late father.

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### Issues

- 20 a. **Whether the 1<sup>st</sup> Applicant ought to be substituted as a Plaintiff in Civil Suit No.71 of 2018?**
- b. **Whether the 2<sup>nd</sup>, 3<sup>rd</sup> & 4<sup>th</sup> Applicants ought to be added as Plaintiffs in Civil Suit No.71 of 2018?**
- c. **Whether the 6<sup>th</sup> to 23<sup>rd</sup> Respondents can be added as Defendants in Civil Suit No.71 of 2018?**
- 25 d. **Whether the Commissioner Land Registration (24<sup>th</sup> Respondent) should avail the 1st Applicant certified copies of the white page and instruments for Kyadondo Block 159 Plots 317 to 500 at Namulonge – Balita?**

**e. Whether the Applicants should be granted leave to amend the Plaintiff to cater for the changes sought under the application?**

Counsel for the Respondents raised **two preliminary points of law** which this court was duty bound to resolve prior to determination of the issues. These are;

- i. Whether the Applicants had locus standi to bring this application before this court?**
- ii. Whether there is a cause of action being disclosed by the applicants and the intended amendments.**

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**Preliminary point of law 1**

**Whether the Applicants had locus standi to bring this application before this court?**

‘Locus standi’ is a well understood legal phrase. It means the right to stand before a court of law to seek redress. Without it, a party cannot be heard. See Dima Dominic Poro v Inyani & Anor (Civil Appeal-2016/17) [2017] UGHCCD 154 (30 November 2017)

It was submitted by Counsel for the 3<sup>rd</sup> Respondent that the 1<sup>st</sup> Applicant admitted that the suit land was sold off to the late Kimera Matayo Musisi. This admission implied that the 1<sup>st</sup> Applicant has no locus standi to make this application before this court. Counsel for the 4<sup>th</sup> and 5<sup>th</sup> Respondents concurred with this submission and added that the Plaintiff in Civil Suit 71 of 2018 indicates that the 1<sup>st</sup> Applicant’s family, lost interest in the suit land when it was sold to the late Kimera Matayo Musisi and the 1<sup>st</sup> Applicant as a result had no locus standi in the suit and therefore no cause of action against the 4<sup>th</sup> and 5<sup>th</sup> Respondents.

Counsel for the Applicants submitted that the 1<sup>st</sup> Applicant has locus standi. He argued that whereas the beneficiaries of the late Siriri Mukasa sold the suit land, the 1<sup>st</sup> Applicant as administrator of the estate of the late Siriri Mukasa, still had the obligation to deliver the title to Kimera Matayo Musisi, who died before he got the same. Since  
5 the estate of the late Siriri Mukasa was fraudulently deprived of the land, the 1<sup>st</sup> Applicant, as Administrator of his estate, had locus standi to bring this application.

The 1<sup>st</sup> Applicant's prayer is that she be substituted as Plaintiff in Civil Suit No. 71 of 2018 and this prayer is made under Order 1 rule 10 of the Civil Procedure Rules which  
10 provides as follows;

***10. Suit in name of wrong plaintiff; addition and removal of parties.***

***(1) Where a suit has been instituted in the name of the wrong person as plaintiff, or where it is doubtful whether it has been instituted in the name of the right plaintiff, the court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute to do so, order any other person to be substituted or added as plaintiff upon such terms as the court thinks fit.***  
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20 It is the 1<sup>st</sup> Applicant's contention that Civil Suit No.71 of 2018 was wrongfully instituted in the name of the Plaintiff, Mr. Kimbugwe Julius. The draft amended plaint indicates that the Applicants intend to remove the Plaintiff, Mr. Kimbugwe Julius, from this suit, and replace him with themselves. Ms. Teddy Nanziri, the 1<sup>st</sup> Applicant, averred that she is the Administrator of the Estate of the late Siriri Mukasa. The Letters of  
25 Administration she attached indicated that on the 20<sup>th</sup> August 2017, she was granted Letters of Administration to the estate by the High Court vide FD-AC-211-2017. Apparently, one of the properties left by her deceased father was 27.17 acres of land comprised in Kyadondo Block 159 Plot 3 at Namulonge-Balita. This court has not been

furnished with any documentary evidence about this averment relating the property comprising the estate of the late Siriri Mukasa. It was imperative for the 1<sup>st</sup> Applicant to demonstrate that as of the 20<sup>th</sup> August 2017, when the letters of administration were issued up to date, the estate of the late Sisira Mukasa still maintained a proprietary  
5 interest in the suit land.

A perusal of the letters of administration granted to the 1<sup>st</sup> Applicant indicate that she was duty bound to file an inventory to the estate of her deceased's father within 6 months of the issuance of the grant. This is a mandatory statutory requirement under  
10 section 278 of the Succession Act Cap. 162 which provides as follows;

*'An executor or administrator shall, within six months from the grant of probate or letters of administration, or within such further time as the court which granted the probate or letters may from time to time appoint, exhibit in that court an inventory  
15 containing a full and true estimate of all the property in possession, and all the credits, and also all the debts owing by any person to which the executor or administrator is entitled in that character; and shall in like manner within one year from the grant, or within such further time as the court may from time to time appoint, exhibit an account of the estate, showing the assets which have come to his or her hands, and  
20 the manner in which they have been applied or disposed of.'*

If the Applicant filed an inventory as she was statutorily bound to do, she omitted to share it with this court. In my view, the absence of the inventory made it impossible for this court to conclude that the suit land in Civil Suit No. 71 of 2018 formed part of the  
25 estate of the late Siriri, pending its transfer, to the late Kimera Matayo Musisi. According to the Plaintiff the suit land was sold to the late Kimera Matayo Musisi in 1983 and he died in 2012. And from the time of purchase to the time of his demise, a total of 23 years, the late Kimera Matayo Musisi was in possession of the suit land. These are



all claims in the Plaintiff. The duty to give good title by transfer to the estate of the late Kimera Matayo Musisi did not, in my opinion, constitute an appropriate ground for substituting the Plaintiff, a beneficiary to the late Kimera's estate, for the 1<sup>st</sup> Applicant. The facts of the Plaintiff in Civil Suit No.71 of 2018 are that the suit land is the property  
5 of the late Kimera Matayo Musisi who acquired it by purchase, 23 years prior to his death, from the 1<sup>st</sup> Applicant and two others. It is my finding that the 1<sup>st</sup> Applicant has no locus standi to make this application before this court.

As regards the 2<sup>nd</sup> – 4<sup>th</sup> Applicants, they averred that as beneficiaries to the estate of the  
10 late Matayo Kimera; they acknowledged that their brother, Kimbugwe Julius, Plaintiff in Civil Suit No. 71 of 2018 had filed the suit to recover their “deceased father’s estate/land. But, as a family, they decided that the 2<sup>nd</sup> Applicant, Kajumba Joseph Hallen, the 3<sup>rd</sup> Applicant Lukanga Godfrey Augustine and the 4<sup>th</sup> Applicant, Namusisi Grace Rose obtain a Certificate of No Objection to obtain letters of Administration to  
15 the late Matayo Kimera’s estate. The family consent, Annexure, ‘A’, is dated 28<sup>th</sup> August 2019. It arises out of Mengo Administrator General’s Cause No. 1842/2013. Thirteen family members appear to have endorsed the consent nominating the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Applicants. The Plaintiff, who is their brother, is not listed among the family members. Perhaps, he was excluded from the meeting or he absented himself, in either  
20 case, it points to the absence of cohesion between these family members.

At the time of filing this application, 2 months after the consent, the 2<sup>nd</sup> to 4<sup>th</sup> Applicants were not in possession of the agreed upon Certificate of No Objection. It is my view that this application was premature until they were actually in possession of letters of  
25 administration to the estate of the late Kimera Matayo Musisi. They could not claim locus standi as potential administrators to the estate of the late Kimera Matayo Musisi. And this court was not prepared to lend its hand in fueling the obvious disharmony in the late Kimera Matayo Musisi’s family by entertaining the prayers of the 2<sup>nd</sup>, 3<sup>rd</sup> and

4<sup>th</sup> Applicants, who at this stage were still beneficiaries of the late Kimera Matayo Musisi's estate just like the Plaintiff in Civil Suit No. 71 of 2018.

**In conclusion, I uphold the preliminary objection on locus standi and dismiss this application with costs to the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents.**

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**Olive Kazaarwe Mukwaya**

10 **JUDGE**

**7<sup>th</sup> April 2021**

**Delivered by email to Counsel for the Applicants and the Respondents.**