

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

5 (ARISING FROM MISCELLANEOUS APPLICATION NO.1442 OF 2019)
(ARISING OUT OF COURT OF APPEAL CIVIL APPEAL NO.230 OF 2019)
(ARISING FROM MISCELLANEOUS APPLICATION NO.1541 OF 2016)
(ARISING FROM CIVIL SUIT NO.81 OF 2014)

10 **VERSUS**

1. RICHARD SEMBATYA MUKISA
2. MUKWATANISE ARTHUR
3. SYLVIA NAMAYANJA.....RESPONDENT

15 ***Ruling.***

20 It seeks orders that the applicant be substituted as an applicant in High Court **Miscellaneous Application No.1442 of 2019** and costs of this application be provided for.

25 That before her demise, the late Twala Caroline filed **Civil Appeal No.230 of 2019** and had also filed: **Miscellaneous Application No.1442 of 2019** as well as **Miscellaneous Application No.1443** against Richard Sembatya Mukisa, Mukwatinise Arthur and Sylvia Namayanja, the respondents herein for stay of execution.

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the time of her death, only **Miscellaneous Application No. 1541 of 2016** had been prosecuted.

Further, that in a family meeting, it was unanimously agreed that the applicant should pursue the pending matters including the appeal thus this application. That it is just and equitable and of no prejudice to either party if this application is granted.

In opposition, the 1st respondent through his lawful attorney Beatrice Mpamizze opposed the application by filing an affidavit in reply. It was deponed that the instant application is bad in law, incompetent, frivolous, vexatious, devoid of any merit and that it is bound to fail.

The respondent through his lawyers raised a preliminary point of law to the effect that the estate of the late Paul Mayanja Kakungano has administrators, none of whom have brought this application and that the applicant lacks locus to bring this application when the suit estate is administered by the duly appointed administrators. Accordingly, it is overtaken by events.

That the applicant is coming to court with dirty hands since she is aware of the developments and that this application is premature. It was further deponed that the purported interim order was erroneously granted as at the time it was granted, the applicant was deceased.

In her affidavit in rejoinder, the applicant averred that the grant of letters of administration was obtained after the filing of this application and that the 3rd respondent is one of the administrators therefore, she cannot be an applicant and respondent at same time in this matter.

That the respondents duly authorized the applicant to pursue the matters of court for the three deceased persons to wit; Paul Mayanja Kakungano, Anna Nagadya and Twala Caroline and that this application does not cater for the interests of Kakungano Paul Mayanja but those of Twala Caroline.

The applicant further deponed that the 1st respondent is fully aware of the interim order since he was served and was part of the proceedings, during which the applicant's lawyer informed court of the death of Twala Caroline.

That for proper management of the case, the applicant should be substituted as the party in the matter. The 3rd respondent did not object to the application and as it turned out she had been appointed as one of the administrators of the estate of the late Paulo Mayanja.

Representation.

The applicant was represented by **M/s Kabega Bogezi & Bukenya Advocates** while the 1st respondent was represented by **M/s Mukiibi & Kyeyune Advocates**.



Consideration by court:

This court directed parties to file written submissions but none of the parties filed the same within the timelines set by court. In the interest of justice, I however took the trouble to carefully study the pleadings and arguments presented by either side.

5 An earlier decision and the ensuing orders have been made vide **MA No. 1442 of 2019**, by which a stay of execution had been granted to Twala Caroline. At the time there was no evidence from the record of that application to show that Twala had passed on or to indicate the actual date on which she died.

10 The present application which had the affidavit in reply deponed by her daughter was filed on 11th January, 2021 three years after her demise. Without proof by way of certificate of death availed, this court could not therefore merely rely on the pleadings and submissions from an application filed in 2021 to determine an application which had been filed earlier.

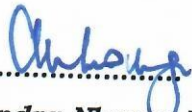
15 All in all, the decision made vide: **MA No. 1442 of 2019** granted some orders the sole purpose of which were to stay the execution of the orders of this court passed vide: **MA No. 1541 of 2016**, pending the appeal which the deceased had filed.

It is however important to point out at this stage that the prayer sought for substitution of the applicant was, as far as this application is concerned restricted to **MA No. 1442 of 2019** which was filed in this court.

20 On that basis, the orders sought are no longer of any use since a stay of execution has already been granted. It is also for those reasons that I have chosen not deal with the merits and demerits of this application.

25 Counsel for the respondents contended (and I could not agree more), that since an appeal was filed vide **CACA No. 230 of 2019**, it is the court handling the appeal to deal with the matters relating to that appeal, including the issue of the *locus* of the applicant to take up the appeal following the death of Caroline Twala.

Each side to meet its own costs.

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Alexandra Nkonge Rugadya

Judge

6th May, 2021.

Delivered via
email.
11/5/2021