

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(LAND DIVISION)

MISCELLANEOUS APPLICATION NO 941 OF 2021

(Arising from Civil Suit No. 278 of 2016)

BEKALAZE

RONALD:.....APPLICANT

(Legal Representative of the Late ERIVESTA NABWAMI)

VERSUS

LUBWAMA MOSES SSENGENDO & 209 OTHERS:.....RESPONDENTS

Before: Lady Justice Alexandra Nkonge Rugadya

R U L I N G:

Introduction:

This application is brought under **section 33 of the Judicature Act Chapter 13 and Section 98 Civil Procedure Act (CPA)** for orders that: -

1. Interim letters of administration be issued to the applicant as the legal representative of the deceased 1st defendant, limited to the head suit.
2. The deceased-the 1st defendant in the head suit be substituted with the applicant her legal representative.
3. An amendment to the Written Statement of Defence be made and entered, to reflect the true character of the applicant the Substitute of the deceased.
4. Cost of this application be provided for.

Grounds of the application:

The grounds of the application are that:



The 1st defendant in the head suit, Erivesta Nabwami died intestate on the 4th of May, 2021. The applicant is her biological son and beneficiary of her estate and not in any way conflicted about the deceased's estate.

5 That the applicant and his elder brother Mr. Mayungwe Fulgencio were on 9th May, 2021 nominated by the deceased's family to apply for letters of administration of the estate, a process they have since begun.

The head suit has an effect on the deceased's estate and is already had been fixed for hearing on the 14th July, 2021, with urgent matters to attend to before, during and after the hearing.

10 That there was limited time within which to obtain letters of administration for the applicant to participate in the preliminary proceedings relating to the trial of the head suit and as well meet urgent necessities of the estate of the deceased and therefore it is just and equitable that the order sought be granted.

Representation:

The applicant was represented by *M/s Rugambanengwe & Co. Advocates*.

15 **Consideration of the issue:**

20 I have carefully read the pleadings and perused through the evidence of the applicant who has authority to represent Mayungwe Flugensio, a co-nominee for letters of administration for the estate of Nabwami Erivesta, who died intestate. (*Refer also to: death certificate dated 4th May, 2021 and a copy of the letter by the LC 1 chairman Butakesu village, marked "A" and "B" respectively.*)

25 The applicant avers that on the 9th May 2021, the children, dependants and relatives of his late mother held a meeting at her home at Butakesu, Nankonge in the district of Wakiso and nominated him and his elder brother Mayungwe Fulgencio to administer the estate of the deceased and formally proceed to get letters of administration. (*A copy of the letter/minute verifying the appointment is attached and marked "C"*).

The application seeks to obtain interim letters of administration of the estate of the deceased limited to the head suit as they continue to pursue the grant from this court, a process which the applicant claims has already began.

The applicant relies on **order 24 rule 4 of the CPR** provides that where a defendant dies and the cause of action continues against the surviving defendants, an application can be made to cause the legal representative of the deceased defendant to be made a party and proceed with the suit.

5 **Section 222 of the Succession Act, Cap. 162** provides as follows:

10 *When it is necessary that the representative of the person deceased is made a party to a pending suit and the executor or a person entitled to administration is unable or unwilling to act, letters of administration may be granted to the nominee of the party in the suit, limited for the purpose of representing the deceased in that suit or in any other cause or suits which may be commenced in the same or in any other court between the parties or any other parties, touching the matters at issue in that cause or suit, and until a final decree shall be made in it, and carried into complete execution.*

15 The applicant in this case claims that the process of obtaining the grant has already commenced and that they have already notified the Administrator General of the death of their deceased mother for purposes of obtaining a Certificate of No Objection *vide Administrator General Cause No. MENGO/AC/1405 of 2021*. (A copy of the Cause Number verifying the fact is attached and marked "D". The Certificate of No Objection is however not attached.

20 It is the applicant's further claim that long before the deceased passed on, she had obtained ownership of several plots of land at Muyenje, Buloba, Wakiso District comprised in **Busiro Block 286 formerly plot 34**, by virtue of the consent judgement/Decree of this court in **Civil Suit No, 175 Of 2012: Erivesta Nabwami V Emmanuel Kasumba**. (A copy of the Consent Order/Decree is attached and marked "E").

25 That by the time of her death, the deceased was defending herself against the suit filed in 2016 by the respondents protesting the Consent Judgement/Decree which the applicant is a beneficiary, alongside his siblings and other defendants.

Furthermore, that the respondents claimed to be aggrieved by the said consent judgement/order and in protest filed the head suit in which they allege that they had already bought some of the plots from Emmanuel Kasumba who later signed the consent with the deceased.

30 He also contends that there are urgent matters which require his attention as the deceased's legal representative since the said plots at Muyenje which are subject of the suit are part of the estate of the deceased to which him and siblings are beneficiaries and would stand to lose if this application is not granted.

That the consent order in **Civil Suit No.175 of 2012** in operation will be rendered nugatory and the beneficiaries of the estate of the deceased stand to lose if interim letters of administration are not granted in a short term.

In the case of **Okway John Kibo V Oddia Nuru and Jamada Oddia Misc.Application No.0039 of 2016 arising from Civil Suit No.031 of 2013**, this court held that a grant of this nature is made where, owing to special circumstances of the case, the urgency of the matter as appears from the affidavit is so great that it would not be possible for court to make a full grant in sufficient time to meet the necessities of the estate of the deceased.

Order 1 rule 10(2) of the CPR grants this court power at any stage of the proceedings, either upon or without an application order that the name of any party whose presence is necessary to be joined as party, so as to enable the court to effectually and completely adjudicate upon and settle all questions involved in the suit.

I am satisfied that given the above circumstances, this is an appropriate case where court would be justified in granting the remedies sought. Accordingly, the orders below are granted as follows:

1. **Interim letters of administration are issued to the applicant as the legal representative of the deceased 1st defendant, limited to the head suit.**
2. **1st defendant in the head suit, Evarista Nabwami is substituted with the applicant, Bekalaze Ronald as her legal representative.**
3. **An amendment to the Written Statement of Defence is to be made to reflect the consequential changes that follow the substitution of the deceased.**

No orders made as to costs.



Alexandra Nkonge Rugadya

Judge

4th February, 2022

Delivered by email



4/2/2022