

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT MPIGI
(MISCELLANEOUS APPLICATION NO. 140 OF 2022)

(Arising from Miscellaneous Application No. 139 of 2022)

5 (Arising from Miscellaneous Application No. 1150 of 2015 and Civil Suit No. 16
of 2016)

(Originally Nakawa Civil Suit No. 457 of 2015)

THE ADMINISTRATOR GENERAL.....APPLICANT

VERSUS

10 1. SEMAKULA SULAIT }
2. NAKATO KEVINA }RESPONDENTS
3. NABUULE ROSE }

BEFORE: HIS LORDSHIP HON. JUSTICE OYUKO. ANTHONY OJOK, JUDGE

15 Ruling

The applicant brought the instant application by way of Notice of Motion under Section 98 of the Civil Procedure Act and Order 52 Rules 1 and 2 of the Civil Procedure Rules against the respondents seeking for orders that;

- 20 a. An interim order be issued to stop and restrain the 1st respondent, his agents, servants, workers or employees or anybody claiming after the 1st respondent or subsequent purchasers from constructing or developing or using or in any way dealing with the suit land till the hearing and disposal of the substantive application.
- b. Costs of this application be in the cause.

25 The application is supported by an affidavit sworn by Kasasa Joseph and the grounds briefly are as follows;

- a. That the applicant filed a land case against the respondents for illegal sale of the deceased's land on Block 85 Plot 130 at Luvumbula – Kiringente, Mpigi District and the case is still pending hearing.
- 30 b. That the applicant authorized Dr. Fr. Lawrence Kanyike, Farasiko Ndagga and Kasasa Joseph to use the estate land but the 1st respondent subdivided the estate land into block 85 Plots 245 and other plots and obtained from

court an order of injunction stopping the applicant's agents from cultivating and using the suit land until the hearing and disposal of the final suit.

- 5 c. That in June 2022, the 1st respondent entered upon the suit land and commenced construction on the land so as to defeat the ends of justice and when the police intervened, the 1st respondent challenged Police and contended that the order of injunction issued by court did not affect the 1st respondent and his agents and that the injunction issued, only stopped the applicant's agents from using the suit land.
- 10 d. That the applicant has filed application No. 139 of 2022 to extend the injunction order which was issued to the respondents so as to restrain him, his agents, workers, servants or anybody claiming after him from constructing on the suit land but the main application has not been heard and disposed of.
- 15 e. That it is necessary that an interim order be issued to stop and restrain the 1st respondent, his agents, workers or servants or anybody claiming after him from constructing on the suit land or developing the suit land or in any way dealing with the suit land till the disposal of the substantive application.
- 20 f. That if an interim order is not issued, the main and substantive application will be rendered nugatory as the 1st respondent and his agents or workers will complete construction on the suit land.
- g. That it is necessary that to prevent the ends of justice from being defeated, an interim order be issued to the 1st respondent to restrain the 1st respondent and his agents or servants or purchasers from constructing on the suit land pending the disposal of the main application which has not been heard and
- 25 h. That the applicant and his agents will suffer irreparable loss as continued construction on the land will change the status of the suit land, it may not be possible to demolish the buildings being constructed on the suit land should the applicant succeed in the main suit.

30 The application was opposed by affidavits in reply sworn by the 1st and 3rd respondents whose grounds I will not reproduce here under.

The applicant also swore an affidavit in rejoinder through Joseph Kasasa whose grounds I will also not reproduce.

Brief facts:

35 The Late Lutuuga Patrick died in 1945 and the estate was partially divided by the Lukiiko in 1921, leaving land at Mawokota undistributed as clan land. That the applicant got Letters of Administration to administer the undistributed part of the estate in 2007. That while the applicant was administering the estate, the 2nd and

3rd respondents on 18/3/2013 sold Block 85 Plot 130 to Semakula Sulait and obtained a second grant of Letters of Administration in 2014.

Consequently, the Administrator General appointed 3 people to wit; Dr. Fr. Lawrence Kanyike, Farasiko Ndagga and Kasasa Joseph to recover the estate and have the second grant of Letters of Administration revoked. That before the case could be heard the 1st respondent applied for a temporary injunction with which the applicant complied. However, the 1st respondent after six years entered onto the land and started construction claiming that the injunction only affected the applicant and not him. That it is from this occurrence that the applicant filed the two applications that is miscellaneous applications No. 140 and 139 of 2022.

Representation:

Mr. Bamwite Edward represented the applicant while Mr. Humphrey Tumwesigye together with Abubaker appeared for the respondents. Both parties made oral submissions in open court.

15 Preliminary objections:

At the hearing of the application, counsel for the respondents raised two preliminary objections arguing that they would dispose of Miscellaneous Application No. 140 of 2022, Miscellaneous Application No. 139 of 2022 and the main suit. The preliminary objections were to the effect that;

1. The applicant has no locus to bring this application.
2. That these applications were already disposed of by this court and the right to reinstate the application is not available to the applicants.

Submissions:

Lack of locus standi:

It was submitted for the respondents that the Administrator General has no powers to grant powers of Attorney to the agents Dr. Fr. Lawrence Kanyike, Farasiko Ndagga and Kasasa Joseph who he asked to apply for revocation of Letters of Administration granted to Kevina and Rose. That once the Administrator General issues a Certificate of no objection on any estate he becomes functus officio over that estate. That on 6/5/2014 the applicant issued a certificate of no objection to Nabuule Rose and Nakato Kevina who became Administrators of the estate of the late Patrick Lutuuga. That once the certificate of no objection was granted the applicant ceased to have any powers over the estate and as such could not issue powers of attorney.

Counsel added that when the Administrator General gets Letters of Administration he cannot delegate his powers to a 3rd party by issuing powers of Attorney.

Applications being barred by Res judicata:

5 Counsel for the respondents argued that the applications No. 140 of 2022 and No. 139 of 2022 are barred by law under **Order 44** of the Civil Procedure Rules. That a temporary injunction was granted in this matter earlier. That under **Order 44** of the Civil Procedure Rules, a litigant who is not pleased with a decision has a right of appeal and the applicant exercised this right of appeal and filed a notice of appeal in the court of appeal. That the applicant having lodged an appeal cannot
10 again apply for review. That once the applicant chose to exercise their right of appeal they lost the right to apply for review. Thus, Application No. 140 of 2022 is *Res judicata* as Miscellaneous Application No. 1150 of 2015 was filed in this court and all the parties were heard on the merits of the application and a temporary injunction was granted on 19/4/2016.

15 Counsel prayed that this court finds merit in the submissions for the preliminary objections and dismisses miscellaneous applications No. 139 of 2022 and No.140 of 2022 and Civil Suit No. 16 of 2016 with costs.

Reply:

Locus standi:

20 Counsel for the applicant on the other hand stated that the office of the Administrator General is governed by an Act and it has corporate sole therefore it can sue or be sued as provided under **Section 2(2)** of the Administrator General's Act. That under **Section 6(1), (2) and (3)** of the same Act, the Administrator General can apply for Letters of Administration and can also appoint agents.

25 It was further submitted for the applicant that the powers of the Administrator General have been recognized by the Courts of Judicature up to the Supreme Court. **(See: Sunday Edward Mugoye v. Administrator General though powers of Attorney given to Grace Nataya, Supreme Court case No. 6 of 2016)**. Thus, the Administrator General can appoint agents.

30 Counsel added that should court disagree with the above decision, it should invoke **Order 1 Rule 10 (2)** of the Civil Procedure Rules which empowers court to order the name of the party improperly joined to be substituted with another name. That the three plaintiffs be substituted under **Order 1 Rule 10 (2)** of the Civil Procedure Rules as beneficiaries. **(See: Israel Kaggwa v. Martin Barobye, Supreme Court case
35 appeal No. 52 of 1995; which stated that; beneficiaries can bring a suit to protect their interest in an estate).**

That in the instant case there are two grants and the 2nd grant is an illegality as there cannot be two grants on the same estate. (See: **Yonasa & Another v. Michael Kiyingi**, H.C.C.S No. 43 of 2003).

Illegality:

5 Counsel for the respondents submitted that Nakato Kevina and Nabuule Rose sold property to Semakula when they had no Letters of Administration on 18th March 2013. (See: **Makula International Ltd v. His Eminence Cardinal Nsubuga and Another**, C.O.A No. 4 of 1981 [1982] H.C.B P .11 where it was held that court cannot sanction what is illegal. Also, in **N.S.S.F and Another v. Alucon International Ltd**, S.C.C.A No. 15/2009, where it was stated that once an illegality is raised, even
10 if the case is competent, the issue of illegality must be addressed).

Further, that the case of **Paul Kawesa v. Administrator General & 2 Others**, Civil Suit No. 918 of 1993 as cited by the respondents in regard to the Administrator General being functus officio after a grant of a certificate of no objection is
15 misplaced. That in the instant case the 2nd and 3rd respondents obtained Letters of Administration and the Adiministrator General appointed agents to go to court and have the Letters of Administration recalled or revoked because the Administrator General could not recall the Letters of Administration. That indeed the Administrator General after a grant of certificate of no objection does not have the
20 powers to recall the same that is why the agents were appointed to have it recalled through court.

Temporary injunction:

It was submitted for the applicant that the argument that a temporary injunction was filed earlier and an appeal was filed against the temporary injunction which
25 was dismissed is not true. That only a Notice of appeal was filed and application No. 139 of 2022 was filed for extension of the interim and the injunction to cover all the parties by invoking **Section 64 (e)** of the Civil Procedure Act, **Section 98** of Civil Procedure Act and **Order 41 Rule 4** of the Civil Procedure Rule on injunctions. (See: **Muhammed Jjumba v. Javiira Sebiitosi**, Miscellaneous application No. 671 of
30 2019, where court held that; “I will therefore vary the order by ordering that both parties ‘maintain the status quo of the suit property as it was’ at the time of the suit). That in the circumstances the injunction should be extended to all the parties and the preliminary objections be overruled and matter heard on its merits.

Rejoinder:

35 That in the instant case the Administrator General renounced his powers when he issued a certificate of no objection to Nakato Kevina and Nabuule Rose and therefore, could not issue any other document in regard to the estate. Thus the

5 powers of attorney were illegally issued. That whereas court has powers under **Order 1 Rule 10** of the Civil Procedure Rules, the three people are not beneficiaries. That the Administrator General was functus officio and could only come as a witness to prove that he was lied to that since the powers of attorney are illegal, the suit should be dismissed with costs. And that since the applicant chose to appeal and not apply for review from the start, he cannot now come to the same court with the instant applications.

Analysis of court:

10 I have carefully considered the oral submissions of both parties while resolving the two preliminary objections as raised by the respondents.

Order 6 Rules 28 and 29 of the Civil Procedure Rules provide that; court may upon the application of either party hear and dispose of a preliminary point of law at any time before the hearing, and where it finds that the objection substantially disposes of the whole suit, dismiss it forthwith.

15 In the case of **Mukisa Biscuit Co. Ltd v. West End Distributors Ltd (1969) E.A No. 696 at 701**, it was stated that;

20 *“A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained, or if what is sought is the exercise of judicial discretion.”*

In the instant case two points of law were raised by the respondents to wit that; the applicant has no locus standi and that the applications are barred by *res judicata*.

Lack of Locus standi:

25 Locus standi means a right or ability to bring a legal action to a court of law or to appear in court, essentially it is a right to be heard.

In the case of **Hon. Katuntu & Another v. MTN Uganda Ltd & Others, H.C.C.S No. 248 of 2021**, it was stated that locus standi as defined by Osborn’s concise law Dictionary 11th Edition is, simply;

30 *“A place of standing; The right to be heard in a court or other proceeding.”*

In the instant case the respondents contended that the applicant had no locus standi to bring the instant applications and the main suit since he already granted a certificate of no objection to the 2nd and 3rd respondents to administer the estate of Lutuuga Patrick meaning he discharged his duties as an administrator and the same duties are now held by the 2nd and 3rd respondents. That upon issuing the

certificate of no objection to the 2nd and 3rd respondent the Administrator General became functus officio. Therefore, the Administrator General illegally appointed his agents to come to court and apply for revocation of the Letters of Administration granted to the 2nd and 3rd respondents as he was already functus official.

5 The applicant on the other hand stated that the Certificate of no objection granted to the 2nd and 3rd respondents was borne out of lies and since the applicant could not himself come to court as he was functus officio, he granted powers of attorney to Dr. Fr. Lawrence Kanyike, Farasiko Ndagga and Kasasa Joseph to apply for revocation of the Letters of Administration and the certificate of no objection
10 recalled or cancelled. That the applicant has the powers to appoint agents and legally did so.

The office of the Administrator General is created by the law under **Section 2** of the Administrator General's Act. Under the said Act, the Administrator General is given the mandate to administer estates, issue certificates of no objection and to
15 verify beneficiaries among other matters.

Section 2 (4) (5) (6) of the Administrator General's Act provides that;

*“4)...but the Administrator General may appoint any person, whether eligible to be appointed by the Minister under this Subsection or not, as the Administrator General shall think fit to be his or her agent in respect of any
20 particular estate or in respect of any matter arising out of any particular estate.”*

5) The Administrator General may, at his or her discretion, delegate to an agent any or all of the powers and duties conferred or imposed upon him or her by this Act...”

6) An agent shall in all respects act under the direction of the Administrator General who shall not be answerable for any act or omission on the part of the agent which is not in conformity with the power or duty delegated by the Administrator General's own fault or neglect.”

An agent is defined as an agent of the Administrator General, duly appointed under
30 **Section 2(4)** as per the provisions of **Section 1(b)** of the Administrator General's Act.

It is very clear from the above provisions that the Administrator General has powers to appoint agents as it did in this case. Therefore, there was no illegality on the part of the applicant in appointing the three agents to appear in court and
35 pursue the revocation of the grant of Letters of Administration to the 2nd and 3rd respondents.

The applicant cited a wealth of authorities as examples of instances where the Administrator general proceeded in court through agents that had been granted powers of attorney. It is therefore, not unique to this case that the Administrator General has the powers to grant powers of attorney to agents so that they can prosecute court matters on his behalf. These authorities do not however, directly deal with the grant of powers of attorney by the administrator general as the subject matter. Though persuasive, they are not directly applicable to the instant case.

I therefore, find and hold that no illegality was committed in the appointment of Dr. Fr. Lawrence Kanyike, Farasiko Ndagga and Kasasa Joseph through the powers of attorney granted to them by the applicant; the said agents were hereby rightly appointed.

In regard to the issuance of the Certificate of no objection to the 2nd and 3rd respondents, it has not been proved to this court that the said respondents applied for revocation of the Letters Administration granted to the applicant on the 26th of October 2007 for them to obtain their grant of the Letters of Administration on the 11th of June 2014 after they had executed the sale with the 1st respondent.

Section 7 (1) (2) (3) of the Administrator General's Act provides that;

“1) At any time after the grant of Letters of Administration to the Administrator General under this Act or the making of an order under Section 24, any person to whom the High Court might have committed administration if no such grant or order had been made may apply to the High Court for revocation of the grant or order and for grant to himself or herself of probate or letters of administration; but no application shall be made until seven days after notice in writing of intention to make it shall have been given to the Administrator General.”

“2) Upon the application the High Court, after hearing the Administrator General if he or she appears, may revoke the grant to the Administrator General or the order made and grant probate or Letters of administration to the applicant subject to such limitations and conditions as it may think fit...”

“3) Upon such revocation and new grant, all interest, powers, rights and duties of the Administrator General in regard to the estate affected by the grant, and all liabilities of the Administrator General under any contract or agreement entered into by him or her in relation to the estate or any part of it shall cease, and such portion of the estate as is left administered by the Administrator General shall vest in the executor or administrator obtaining

the new grant, subject, never the less to all lawful contracts previously made...”

5 The 2nd and 3rd respondents applied for a certificate of no objection from the Administrator General and the same was granted however, the said respondents did not adduce any evidence to prove to this court that they applied to have the Letters of Administration held by the Administrator General revoked as it is; an estate cannot have two grants of Letters of Administration. Hence, the applicant chose to institute the main suit to have the said letters of administration revoked.

10 The respondents cited the case of **Paul Kaweesa v. The Adminsitrator General and 2 others, (supra)**, where the Administrator General was found to be found functus officio after the grant of a succession certificate. Thus, could not recall the same.

15 The above authority is distinguishable from the instant case as in the cited authority the Administrator general issued a succession certificate and there after recalled it and then the matter went to court. The court found the action of then Administrator general of recalling the succession certificate was wrong as he was already functus officio. That in case of anything, it should have been a court of competent jurisdiction to call back the succession certificate.

20 In the instant case there are two grants on one estate and the matter has been brought to court by the administrator general through its agents. And an estate cannot have two grants at any one time.

It was also argued by the applicant that the 2nd and 3rd respondent obtained the Letters of Administration illegally since there were already Letters of Administration granted to the applicant.

25 I do agree with the position in the case of **Makula International Ltd v. His Eminence Cardinal Nsubuga and Another, (Supra)** where it was stated that an illegality once brought to the attention of court must be addressed. There is therefore, need for this illegality to be addressed by this court which illegality supersedes all manner of pleadings.

30 I accordingly find and hold that the applicant has locus standi in this matter and has the powers to appoint agents to represent him in courts of law as is in this case.

The first preliminary objection is hereby overruled.

Application barred by Res judicata:

Section 7 of the Civil Procedure act is the law on *Res juidicata* and provides as follows;

5 *“No court shall try any suit or issue in which the matter directly or substantially in issue has been directly and substantially been in issue in a former suit between the same parties, or between parties under who they or any of them claim, litigating under the same title, in a court component to try the subsequent suit or the suit in which the issue has been subsequently raised, and has been heard and finally decided by the court.”*

In the case of Henderson v. Hederson 3 Hare 114 it was stated that;

10 *“...Res judicata includes two related concepts: claim preclusion and issue preclusion. The former focuses on barring a suit from being brought again, and again, on a legal cause of action that has already been finally decided between the parties or sometimes those in privity with a party; while the latter bars the re-litigation of factual issues that have already been necessarily determined by a judge or jury as part of an earlier claim. It presupposes that;*

15 *i. There are two opposing parties;*

ii. There is a definite issue between them;

iii. There is a tribunal competent, the tribunal has done so...”

20 In the instant case the respondents argued that the applications are barred by *Res judicata* because a temporary injunction was already granted by this court on the 19th day of April 2016. That the temporary injunction upon being granted, the applicant lodged an appeal that was dismissed.

25 The applicant on the other hand averred that the appeal was never followed up and thus, was dismissed for want of prosecution and was never determined by the court of appeal. That it was on that basis that they came back to this court to extend the orders granted in the previous temporary injunction since it was one sided and they needed it to bind both parties so that the status quo is maintained pending the hearing of the main suit under **Order 41 Rule 4** of the Civil Procedure Rules. That the varying of the terms of the injunction are also to preclude anybody else not only the parties from tempering/dealing with the suit land until the determination
30 of the main suit.

Section 64 (c) of the Civil Procedure Act provides that;

“In order to prevent the ends of justice from being defeated, the court may, if it is also prescribed, grant a temporary injunction and in case of disobedience commit the person guilty of it to prison...”

The respondents contended that the applicant having pursued an appeal under **Order 44** of the Civil Procedure Rules, cannot come again to apply for review under **Section 82** of the Civil Procedure Act since the option for review was initially available and was not chosen.

5 It is my considered view that *Res judicata* is inapplicable in the instant case as it only applies to matters that are heard and determined to their conclusion on their merits and in the instant case the applications such as these do not fall under that ambit.

10 It is true that the applicant had lodged an appeal in the Court of Appeal however, the same was never heard and it was dismissed for want of prosecution because apart from a Notice of Appeal, no other pleadings or court documents were ever filed by the applicant. Nor was the appeal ever followed up on.

15 I do not find it prejudicial in any way that the applicant came back to this court and applied to have the terms of the previous temporary injunction extended to cover both parties. If anything, the temporary injunction should have from the very beginning been binding on both parties to preserve the status quo of the suit property pending the determination of the main suit.

20 A temporary injunction is granted in rem and therefore applies to the whole world at large and not to an individual. It goes against the principles of natural justice that one party is barred from using the suit land as the other goes ahead with developments on the same well knowing that there is a dispute or contention over the property being developed. This would in essence mean that the matter has already been determined and one party has emerged the winning party which is quite absurd.

25 The applicant therefore, in my view did no wrong to come back to the same court and apply for it to have the effect of the temporary injunction granted in 2016 extended to the 1st respondent.

This preliminary objection is also overruled.

30 In a nut shell all the preliminary objections are hereby overruled. I also associate myself with the finding in the case of **Muhammed Jjumba v. Javiira Sebiitosi, (supra)**. The temporary injunction is accordingly extended to preclude all the parties (applicant and respondents) in this matter, their agents, servants, workers or anybody claiming interest through any of them from interfering with the suit property until the main suit is determined.

35 Let the status quo of the suit land be maintained until the disposal of the main suit. The ongoing construction is hereby ordered to stop with immediate effect. The 1st

respondent is restrained from further developing or constructing or in any way dealing in the suit land until the main suit is disposed of.

Let the suit be fixed to be heard expeditiously on its merits. Costs in the cause. I so order.

5 Right of appeal explained.

.....

OYUKO ANTHONY OJOK

JUDGE

10 **25/10/2022**