

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT MPIGI**  
**MISCELLANEOUS APPLICATION NO. 167 OF 2021**  
**(Arising from Civil Suit No. 160 of 2017)**

5 **LIVINGSTONE KATO.....APPLICANT**

**VERSUS**

**NAKIRYA REGINA.....RESPONDENT**

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

10 **Ruling**

The applicant brought this application by way of Chamber Summons under **Order 7 Rules 11 (e), 19** of the Civil Procedure Rules against the respondent seeking the following orders;

- 15       1. The plaint be rejected on account of Civil Suit No. 160/2017 being frivolous or vexatious.  
         2. Costs of this application be provided for.

The application is supported by an affidavit in reply sworn by the applicant and the grounds briefly are as follows;

- 20       1. The applicant was a joint registered owner of land comprised in Mawokota Block 321 Plot 10 at Kyango Katebo, in a joint tenancy with Abuneri Lule, Fred Sabasakula and Kevin Namirembe vide instrument number, Kla 152192.  
         2. That all the applicant's co-registered owners in their capacity as joint tenant died and the applicant was left as the sole surviving registered  
25       proprietor in accordance with the principle of survivorship under a joint tenancy.  
         3. That the applicant while exercising his right as the sole survivor under the joint tenancy in respect of land comprised in Mawokota Block 321 Plot 10  
30       proceeded to effect the necessary changes on the register making him the sole registered proprietor thereof, which is in accordance with the law.

4. That the respondent filed a frivolous and vexatious suit No. 160 of 2017 seeking a declaration that the land comprised in Mawokota Block 321, Plot 20, 30, 35,36 and 37 belongs to the estate of her late mother Kevina Namirembe; a declaration that the purported cancellation of late Kevina Namirembe as proprietor of the suit land is null and void for fraud; an order for reinstatement of the late Kevina Namirembe as proprietor on the suit land, permanent injunction; general damages, mesne profit; interest and costs of the suit.
5. That it would be in the interest of justice if this application is allowed.
- 10 The application is opposed by an affidavit in reply sworn by the respondent and the pertinent paragraphs are 4, 8, 9, 10, 11, 12, which state as follows;
4. That the late Kevin Namirembe was the administrator of the estate of the late Batolomayo Zavuga Magambo and got registered on the certificate of title of the land comprised in Mengo Block 321 Plot Number 10 as it then was.
- 15 8. That the applicant obtained the certificate of title of the suit land from the late Kevin Namirembe through false pretence and concealed the same from her which forced her to make several complaints during her lifetime to local authorities. Local council letters confirming the same are hereby attached and collectively marked as Annexure C.
- 20 9. That it was never known to the late Kevin Namirembe nor myself that the applicant had fraudulently registered himself as the proprietor of the suit land and had also undertaken several subdivisions of the same.
10. That I got to know that the applicant had registered himself as a joint owner together with Abuneri Lule, Fred Sebatakula, and the late Kevin Namirembe when I carried out a search on the suit land which prompted me to lodge caveats on the suit land.
- 25 11. That the applicant, Abuneri Lule and Fred Sebatakula are not related in any way to the late Kevin Namirembe or the late Batolomayo Zavuga Magambe and never furnished any consideration to her to become joint owners of the suit land.
- 30 12. That the applicant, Abuneri Lule and Fred Sabatakula became registered proprietors claiming to be beneficiaries of the late Batolomayo Zavuga Magambo and yet they are not related or known to the respondent who is the only surviving beneficiary of the late Kevin Namirembe.

The applicant swore an affidavit in rejoinder and the pertinent paragraphs are 4 and 5 which state as follows;

4. That as co-registered proprietor in the lifetime of Kevina Namirembe and in the lifetime of all others Fred Sabatakula, Abuneri Lule as well as myself, we transacted by way of sale and transfer of portions of land to one G. W Semwogerere, Elly Mubiru and a lease of land to one Katebo Fisheries Ltd, Distribution to one Janet Namirembe and another Peter Baleke to whom land was gifted to and we had to execute joint transfers as joint registered owners.

5. That there is no way the respondent can file such frivolous and vexatious claim/suit challenging the applicants ownership of the land he once held jointly with Kevina Namirembe who did not herself as co-registered owner/proprietor challenge the registration of others to Kato L, Abuneri Lule, F. Sabatakula as registered owners, this is enough proof that the suit by Nakirya R. is frivolous and vexatious and a waste of court's time the reason it should be dismissed with costs. More so, the same is time barred and cannot be sustained in law.

#### **Representation:**

Mr. Katabalwa Francis appeared for the applicant during the hearing of the application while Ms. Nankya Angelika appeared for the respondent. Both parties made oral submissions.

#### **Submissions:**

Counsel for the applicant submitted that the suit property was initially owned by four joint registered proprietors and eventually the three passed on leaving the applicant who remained the sole registered proprietor. The respondent filed the suit in 2017 seeking cancellation of title of the applicant.

That **Order 7 Rule 11** of the Civil Procedure Rules gives the circumstances under which the plaint can be rejected. And particularly **sub rule (e)** of that order is when the plaint is vexatious and frivolous.

The particulars in this case are that; the plaintiff/respondent filed this suit claiming to have Letters of Administration at the time of filing yet she did not have them and she got the Letters of Administration in January 2022.

Secondly, that the deceased Kevina Namirembe who the respondent claims to be representing as an Administrator, prior to her death made a number of

transactions and agreements with her co-registered proprietors which is not in dispute. That the law is very clear that the surviving proprietor takes the property unless the respondent wants to change the law.

5 In reply it was submitted for the respondent that the joint proprietorship was procured fraudulently by the applicant thus the doctrine of survivorship does not apply. That the respondent is a beneficiary of the late Kevina Namirembe, the only surviving child.

10 That prior to her death the late Kevina Namirembe had made complaints about concealment of her land titles of the suit land by the applicant and the 2<sup>nd</sup> defendant in the main suit.

Counsel added that the late Kevina Namirembe was fraudulently registered on the title as a joint owner together with the applicant after her death. That the applicant did this under the guise that he was going to bring investors onto her land.

15 The respondent emphasized that the late Kevina had never engaged in any transactions with the applicant and did not know of any.

20 Counsel argued that the applicant lays his claim as a beneficiary of Batolomayo who was the father of Kevina Namirembe yet the respondent claims that they are not related. That the applicant was merely a clan mate which cannot entitle him to beneficial interest in the estate of Batolomayo since the late had a surviving child the late Kevina Namirembe. Thus, the suit is not vexatious and frivolous and should be set for hearing.

25 In rejoinder it was submitted for the applicant that the respondent delayed in her action. That the late mother of the respondent transferred the suit property to herself and three others as an administratrix of the late Batolomayo in 1991. That she cannot now make a claim after 31 years as the suit is barred by limitation and besides the land has been transferred to many more people. That the suit is vexatious as the respondent obtained Letters of Administration on the 17<sup>th</sup> January 2022 yet the suit was filed on the 18<sup>th</sup> of October 2017.

30 **Analysis of court:**

I have carefully analyzed the application, the affidavits for and against it and the submissions of both parties which I have considered in the resolution of this application.

The applicant argued that the suit of the respondent is frivolous and vexatious thus, it should be rejected under **Order 7 Rule 11** of the Civil Procedure Rules. He noted that the respondent filed the suit while she had no letters of administration. He further argued that he was added on the certificate title basing on the transfer effected by the late Kevina Namirembe in 1991. That the late Kevina Namirembe was also part of several transactions that were carried out in regard to the suit land.

The applicant also added that the late Kevina disposed off most of her part of the land coming to about 140 acres and the remaining land was given to the respondent.

Black's law dictionary 5<sup>th</sup> Edition P. 601 defines the term frivolous as;

*“...of little weight or importance. A pleading is said to be frivolous when it clearly insufficient on its face and does not controvert the material points of the opposite pleading and is presumably interposed for mere purposes of delay or to embarrass the opponent.”*

Vexatious is defined to mean without reasonable or probable cause of excuse; harassing; annoying. (See: Black's law dictionary, 7<sup>th</sup> Edition page 1235). It is further defines a vexatious suit as a law suit instituted maliciously and without good cause.

The provision that the plaint shall be rejected under **Order 7 rule 11** of the Civil Procedure Rules on any of the grounds set out under **Rule 11** has been held by the East African Court of Appeal to be mandatory in the case of **Auto Garage versus Motokov [1971] EA 514**.

According to Odger's 'Principles of Pleading and Practice in Civil Actions of the High Court of Justice' 22<sup>nd</sup> edition page 148, an application to reject a plaint on the ground of being frivolous or vexatious relies only on the facts pleaded and no evidence is admissible.

#### **Letters of Administration:**

The respondent in the plaint kept making reference to herself as an Administratrix of the estate of the late Kevina Namirembe however, no proof of Letters of Administration was provided. The respondent only got to apply for the Letters of Administration after file the suit which were granted in January 2022 yet the suit was filed in 2017.

The respondent also claims to be a beneficiary of the estate of the late Kevina Namirembe.

5 I find that the respondent erroneously referred to herself as the Administratrix of the estate of the late Kevina Namirembe and only got to obtain the Letters of Administration as an afterthought. The respondent should have referred to herself as the administratrix of the estate of the late Kevina Namirembe while having obtained the Letters of Administration and not before that. The position would have been different if she only referred to herself as a beneficiary as she would not have been required to present proof of Letters of Administration. In the  
10 case of **Israel Kabwa v. Martin Banoba, S.C.C.A. No.52 of 1995** the Supreme Court held that;

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

15 This therefore, does not give her locus standi to sue as the Administratrix and makes her suit frivolous and vexatious in the circumstances.

#### **Fraud:**

20 The respondent contended that the applicant fraudulently cancelled the name of the late Kevina Namirembe from the Certificate of Title and that the same should revert back to the late as the respondent is a surviving child and beneficiary of that estate.

25 The respondent further stated that the late Kevina Namirembe had been reporting about her Certificates of title being taken or concealed by the applicant and his colleagues to the local authorities. However, the letters allegedly written are in regard to the complaints made by the respondent and not the late Kevina Namirembe. These letters are collectively marked as annexure “C” attached to the respondent’s affidavit in reply and are dated from the years of 2019-2022. There is no proof of any written complaints made by the late Kevina Namirembe. The respondent denied any knowledge of the transactions that were conducted by the late mother with the applicant and the other proprietors.

30 The respondent argued that the applicant was not a beneficiary of the estate of the late Batolomayo and that he only became the sole proprietor through fraud.

The Court in the case of **Fredrick Zaabwe v. Orient Bank & Others SCCA No, 4 of 2006**, defined fraud to mean; the intentional perversion of the truth by a person

for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or her or to surrender a legal right. It is a false representation of a matter of fact whether by words or by conduct, by false or misleading allegations or concealment of that which deceives and it is intended to deceive another so that he or she shall act upon it to his or her legal injury.

In the instant case the applicant argued that he became a registered proprietor on the suit property with three others in 1991 and upon the death of the three others he became the sole proprietor.

That the late Kevina Namirembe even in her life time and in the lifetime of all others Fred Sabatakula, Abuneri Lule as well as him, transacted by way of sale and transfer of portions of land to one G. W Semwogerere, Elly Mubiru and a lease of land to one Katebo Fisheries Ltd, Distribution to one Janet Namirembe and another Peter Baleke to whom land was gifted to and they had to execute joint transfers as joint registered owners. This argument was supported by collective annexure marked 'D' attached to the applicant's affidavit in rejoinder.

Section 59 of the Registration of Titles Act provides that;

*"No certificate of title issued upon an application to bring land under this Act shall be impeached or defeasible by reason or on account of any informality or irregularity in the application or in the proceedings previous to the registration of the certificate, and every certificate of title issued under this Act shall be received in all courts as evidence of the particulars set forth in the certificate and of the entry of the certificate in the Register Book, and shall be conclusive evidence that the person named in the certificate as the proprietor of or having any estate or interest in or power to appoint or dispose of the land described in the certificate is seized or possessed of that estate or interest or has that power."*

This court cannot go into the merits of the suit to determine the allegations of fraud as these cannot be adduced through affidavit evidence. However, the applicant in this case has adduced evidence as to how he came to be registered on the Certificate of title and how he remained the sole proprietor. I will accordingly take that he is the lawful registered proprietor.

#### **Limitation:**

The applicant contended that the suit is barred by limitation since the transfer was made in 1991 and the suit was filed 31 years later.

With regard to actions for recovery of land, there is a fixed limitation period stipulated by **Section 5** of The Limitation Act. This limitation is applicable to all suits in which the claim is for possession of land, based on title or ownership i.e., proprietary title.

5    **Section 5 of the Limitation Act provides that;**

*“No action shall be brought by any person to recover any land after the expiration of twelve years from the date on which the right of action accrued to him or her or, if it first accrued to some person through whom he or she claims, to that person.”*

10   Furthermore, **Section 11 (1)** of the same Act provides that;

*“No right of action to recover land shall be deemed to accrue unless the land is in the possession of some person in whose favour the period of limitation can run (hereafter in this section referred to as “adverse possession”), and where under sections 6 to 10, any such right of action*  
15 *is deemed to accrue on a certain date and no person is in adverse possession on that date, the right of action shall not be deemed to accrue until adverse possession is taken of the land.”*

In **F.X. Miramago v. Attorney General [1979] HCB 24**, it was held that the period of limitation begins to run as against a plaintiff from the time the cause of action  
20 accrued until when the suit is actually filed. Once a cause of action has accrued, for as long as there is capacity to sue, time begins to run as against the plaintiff. One of the important principles of the law of limitation is that once time has begun to run, no subsequent disability or inability to sue stops it.

25 In the instant case the respondent according to her plaint stated that she came to know of the fraud in March 2017 and the suit was also filed in 2017.

I accordingly find that the suit was not barred by limitation. However, the suit was brought by the respondent in a capacity that she did not have.

I accordingly allow the application and hereby reject the plaint with costs on account that Civil Suit No. 160/2017 is frivolous or vexatious. I so order.

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Right of appeal explained.

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OYUKO ANTHONY OJOK

5 JUDGE

29/8/2022