

THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
[LAND DIVISION]  
HCCS. NO. 013 OF 2022

NAKIGUBE MILLY ..... PLAINTIFF

V

1. NAJUUKO JOSEPHINE  
2. NANSASI JOYCE ..... DEFENDANTS

BEFORE: - HON. LADY JUSTICE P. BASAZA - WASSWA

RULING

[ON A PRELIMINARY OBJECTION]

Representation:

Mr. Kajeke Kenneth for the Plaintiff.

Mr. Bikadho Fahad for the Defendants.

Introduction:

[1] The present suit was brought by the Plaintiff; **Ms. Nakigube** against the Defendants; **Ms. Najuuko and Ms. Nansasi** for alleged trespass and fraud in respect of **property** comprised in Kyadondo Block 207 Plot 2232 at Kanyanya, measuring 0.020 hectares ('the suit property').

*Masabuni 3/13*

[2] In her plaint, the Plaintiff contends

- i) That the Defendants are her maternal aunt and maternal grandmother respectively.
- ii) That she brings her suit against the defendants, as a biological daughter of the late Victoria Namayanja who is the registered proprietor of the suit property, and as a beneficiary to the latter's estate.
- iii) That no letters of administration to the estate of the deceased have ever been issued as the 1<sup>st</sup> Defendant; Ms. Najuuko hid the death certificate of the deceased with a view to frustrating the process of securing letters of administration to the deceased's estate.
- iv) That the Defendants were each given property out of the estate of the deceased and have no interest therein, but have refused to vacate the suit property and are illegally occupying the same and have illegally laid claim to ownership of the suit property.

[3] Ms. Nakigube seeks *inter alia*, for a Declaration that she is the lawful / rightful owner of the suit property, for vacant possession of the suit property, and for a permanent injunction against the Defendants.

[4] In answer, in their joint written statement of defence, Ms. Najuuko and Ms. Nansasi contend that the suit property still belongs to the estate of the deceased, who died intestate, and that at all material times they were full dependents and beneficiaries to her estate.

*Masubwano 3/3*

[5] before the commencement of the scheduling / hearing of this matter, Mr. Bikadho; learned defence Counsel raised a preliminary objection by way of written submissions. In answer, in the same manner, Mr. Kajeke replied, and hence this Ruling.

Submissions of Counsel on the Preliminary objection:

[6] Mr. Bikadho's objection is to the effect that the plaint does not disclose a cause of action against the Defendants. That amongst her prayers, Ms. Nakigube seeks '*a declaration that she is the rightful owner or lawful owner of the suit property*', yet she has not obtained letters of administration to the estate of the late Victoria Namayanja, and that nor have the letters of administration been issued to anyone.

That Ms. Nakigube does not plead any material facts that would give her a right to own the suit property in her individual capacity without letters of administration, and that nor does she attach an inventory showing that the suit property was distributed as a basis for her claim to its ownership.

For his proposition Mr. Bikadho cited *inter alia*,

- i) **Maureen Tumusiime v Macario & Anor**<sup>1</sup>
- ii) **Macharia v Wanyoinke**<sup>2</sup>

[7] In reply, Mr. Kajeke learned Counsel for the Plaintiff submitted that in paragraphs 3 (a), 6 (d) & 6 (e) of her plaint, Ms. Nakigube pleads that she is the only biological daughter of the late Victoria Namayanja, and filed this suit as a beneficiary of the

*Masikali Mwanuzi 3/3*

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<sup>1</sup> (2006) HCB at page 127

<sup>2</sup> (1972) EA at page 264, K

estate of the deceased. That her right to process the letters of administration thereto were frustrated by the Defendants who have since hidden the death certificate of the Deceased and are liable, and have since lodged a complaint claiming ownership of the suit property.

For his proposition Counsel cited **Proline Soccer Academy Ltd v Lawrence Mulindwa & 4 Ors**<sup>3</sup>.

Decision of Court:

[8] In determining whether or not a plaint discloses a cause of action, a court is required to look at the plaint only.

Order 6 Rule 1 and Order 7 Rule 1 (e) and 11 (a) of the Civil Procedure Rules provide that (paraphrased);

A plaint shall contain a brief statement of the material facts constituting a cause of action and when it arose. Where it does not contain a cause of action, it shall be rejected.

[9] A cause of action is defined in **Black's Law Dictionary**<sup>4</sup> as;

'A group of operative facts giving rise to one or more bases for suing...'

[10] In **Ismail Serugo vs. Kampala City Council**<sup>5</sup>, the Justices of the Supreme Court stated that; '...a cause of action in a plaint, is said to be disclosed if three elements are pleaded namely;

- a) Of the existence of the Plaintiff's right
- b) Violation of that right and
- c) Of the Defendant's liability for that violation'

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<sup>3</sup> HCMA No. 0459 of 2009.

<sup>4</sup> 9<sup>th</sup> ed. at page 251

<sup>5</sup> S/C Constitutional Appeal No. 2 of 1998.

- [11] The objection raised by Mr. Bikadho relates to only the 1<sup>st</sup> element of the list of three elements in the Ismail Serugo case (supra). He argues essentially that the 1<sup>st</sup> element is not disclosed in the plaint because Ms. Nakigube does not plead any material facts that would give her a right to own the suit property.
- [12] **I carefully perused the plaint only, and I found that since Ms. Nakigube pleads in her plaint that *'she sues as a beneficiary to the deceased's estate'*, she thereby disclosed the existence of an alleged right to an entitlement to own the suit property, or part thereof, within the meaning of sec. 27 of the Succession Act<sup>6</sup>, as amended<sup>7</sup>.**
- [13] It is now well settled that before letters of administration are obtained, beneficiaries to the estate of a deceased person have a right / *locus standi* to sue to defend their interest as beneficiaries to the deceased's estate. See Israel Kabwa v. Martin Banoba<sup>8</sup>.
- [14] In the Israel Kabwa case (supra), learned Counsel for the Appellant submitted that the Respondent therein had not obtained letters of administration to the estate of his late father and that therefore he had no *locus standi* to institute that suit to recover the suit land. The learned trial Judge answered the issue of *locus* in the affirmative to the effect that the Respondent being a person entitled to a share in the deceased's estate, had sufficient interest to give him locus in the case. On appeal, in his Judgment, Teskooko, JSC. accepted the view of the learned trial Judge and added that under the Succession Act, the Respondent could very well be entitled to

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<sup>6</sup> Cap. 162

<sup>7</sup> See sec. 14 of the Succession (Amendment) Act, 2022

<sup>8</sup> SCCA No. 52 of 1995.

76% or more of the estate of his late father and was thus defending his interest. That even if no letters of administration had been obtained, the Respondent's rights to the suit land, and his developments thereon, did not depend on letters of administration.

[15] On the strength of that authority, I find that clearly Ms. Nakigube has pleaded the 1<sup>st</sup> element of a cause of action in her plaint. I also find that indeed the other two (2) elements of a cause of action, as defined in the Ismail Serugo case (supra), have likewise been pleaded.

[16] In the result, the preliminary objection raised has no merit. I accordingly overrule it, with costs to the Plaintiff. The hearing of this suit shall thus proceed, and is accordingly set down for scheduling on April 20, 2023 at 10am. A joint scheduling memorandum (JSM) and a Joint trial bundle (JTB) shall be filed by that date.

I so order,

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**P. BASAZA - WASSWA**

**JUDGE**

March 3, 2023

Ruling delivered electronically on the Judiciary ECCMIS portal, and via email to the parties.