

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)
MISCELLANEOUS APPLICATION NO. 203 OF 2024
(ARISING FROM CIVIL SUIT NO. 906 OF 2021)

KATENDE PASKAZIA :: APPLICANT

VERSUS

- 1. SSENGONZI MATHIAS**
2. TUMURAMYE BERNARD
3. COMMISSIONER LAND REGISTRATION::: RESPONDENTS

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3. COMMISSIONER LAND REGISTRATION:..... RESPONDENTS

BEFORE: HON. LADY JUSTICE IMMACULATE BUSINGYE

BYARUHANGA

RULING

This application was brought by way of summons in Chambers under Section 98 of the Civil Procedure Act, Order 6 rule 19 and Order 24 rules 2 and 12 of the Civil Procedure Rules seeking the following orders;

- a. Court makes an entry that the 2nd plaintiff in Civil Suit No. 906 of 2021 died.
- b. The cause of action in HCCS No. 906 of 2021 continues or survives to the applicant.
- c. The paint in HCCS No. 906 of 2021 be amended to remove the name of the 2nd plaintiff.
- d. Costs of the application be made in the cause.

At the trial, the applicant was represented by Miss Ntono Lydia, Mr. Godfrey Mafabi represented the 1st respondent while the 3rd respondent was represented by Miss Arinaitwe Sharon holding brief for Mr. Ssekitto Moses.

The application is supported by the affidavit of Katende Paskazia, but the grounds stated in the application are as follows: -

1. Civil Suit No. 906 of 2021 was instituted by two plaintiffs that the applicant and a one Elizabeth Namiro.
2. The said Namiro died on 3rd June 2023.
3. The death of Elizabeth Namiro does not abate the suit.
4. The cause of action in HCCS No. 906 survives or continues to the applicant.
5. The applicant desires to continue and pursue Civil Suit No. 906 against the defendants.
6. The plaint be amended and the name of the 2nd plaintiff in HCCS No. 906 be removed.
7. The grant of this application will not cause any inconveniences to the parties.
8. It is in the interests of justice that the order herein sought be granted by this Honourable Court.

Background

On 4th March 2020 two plaintiffs that is Elizabeth Namiro and Paskazia Katende (applicant in the current application) filed Civil Suit No. 203 of 2020 against Ssensozi Mathias (current 1st respondent) alleging that in the year 2014, the current 1st respondent sold to them land comprised in Busiro Block 219 plot 298 at Gayaza (*hereinafter referred to as the suit land*) for a sum of Uganda Shillings 56,000,000 (Uganda Shillings Fifty-six million) and that the 1st respondent as the then defendant refused to give them signed transfer forms. On 15th October 2020, the Deputy Registrar of Land Division entered an interlocutory judgment against the 1st applicant for failure to file a written statement of defence under Order 9 rule 8 of the Civil Procedure Rules. On 30th May 2023, the trial judge abated the suit under Order XIA of the Civil Procedure Rules.

On 16th October 2021, the plaintiffs (current applicant and Namiro Elizabeth) filed Civil Suit No. 906 of 2021 against Ssensozi Mathias who is the current 1st

5 respondent) as 1st defendant, Tumuramye Bernard as 2nd defendant (current 2nd
respondent) and the Commissioner Land Registration as 3rd defendant (current 3rd
respondent) praying for cancelation of the 2nd defendant on the title of the suit land
by the 3rd defendant and an order directing the 3rd defendant to register the plaintiffs
as proprietors of the suit land. The plaintiffs alleged in 2014 they purchased the suit
10 land from the 1st defendant at Uganda Shillings 56,000,000 (Uganda Shillings Fifty-
Six Million) and the 1st defendant never gave them transfer forms and that on 23rd
July 2018, the 1st defendant sold the suit land to the 2nd defendant and signed transfer
forms in his favour hence his registration as the owner of the suit land on the
certificate of title.

15 On 1st June 2023, the 2nd plaintiff (Namiiro Elizabeth) died at St. Francis Hospital
Nsambya at the age of 73 at 3.00pm and a death certificate was issued by National
Identification and Registration Authority(NIRA) under serial number 1769192 as
20231221-154710 (Annexure “A” to the affidavit in support of the current
application). When Civil Suit No. 906 of 2021, came up for scheduling, Counsel for
20 the plaintiffs informed court that the 2nd plaintiff had passed on and she intended to
file an application for amendment of the plaint to remove the 2nd plaintiff such that
one plaintiff (1st plaintiff) proceeds with the suit against the defendants hence the
current application whose prayers have been outlined above.

At the hearing, the court directed the respondents to file their affidavits in reply by
25 9th February 2024 and subsequently the parties were all to file their submissions
however, according to Electronic Court Case Management System (ECCMIS) it is
only the 1st respondent who filed an affidavit in reply on 13th February 2024 through
the law firm of Madibo Mafabi Advocates where the 1st respondent deposed that
while Civil Suit No. 203 of 2020 was still pending in this court, the applicants also
30 filed Civil Suit No. 906 of 2021 and the added two new parties seeking declarations

5 that the defendants were fraudulent in the transfer of the suit land in the names of the 2nd defendant.

The 1st respondent further deposed that the applicants caused him to be charged and prosecuted and subsequently a settlement was reached for a refund and Elizabeth Namiro provided her bank account No. 3010100145 and 3100012488 in Centenary
10 Bank Entebbe Road Branch where he deposited Uganda Shillings 5,000,000 (Uganda Shillings Five Million) (as per attachments “C” and “D” to the affidavit in reply).

The 1st respondent further stated that the declarations sought in Civil Suit No. 906 of 2021 are mere modifications of Civil Suit No. 203 of 2020 and that the application
15 has no case number and the same was not signed by the registrar. In addition, the 1st respondent deposed that an interlocutory judgment entered in HCCS No. 203 of 2020 cannot be concluded by abatement ruling and the subject matter in both suits is Block 298 plot 219 at Gayaza. The applicant swore the said affidavit in opposition of the application to remove Namiro Elizabeth from Civil Suit No. 906 of 2021.

20 It should be noted that none of the parties in this application filed submissions as directed by court.

Decision of Court

Order 6 rule 19 of the Civil Procedure Rules empowers this court to amend pleadings at any stage of the proceedings, allow either party to alter or amend his or
25 her pleadings in such manner and on such terms as may be just and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

In a case where one of the plaintiffs or defendants dies during the subsistence of civil proceedings, the cause of action survives or continues in accordance with the

5 provisions of Order **24 rule 2** of the Civil Procedure Rules and the said provision enjoins this court to make an entry on the court record and the suit proceeds at this instance with the surviving plaintiff or defendants, whatever the case maybe. Order 24 rule 2 of the Civil Procedure Rules provides as follows: -

10 *“Where there are more plaintiffs or defendants than one, and any of them dies, and where the cause of action survives or continues to the surviving plaintiff or plaintiffs or plaintiffs alone or against the surviving defendant or defendants alone, the court shall cause an entry to that effect to be made on record, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, or against the*
15 *surviving defendant or defendants”*

According to annexure **A** to the affidavit in support of the application, the 2nd plaintiff in the head suit (HCCS 906 of 2021), a one Elizabeth Namiiro died on the 1st day of June 2023 as proved by her death certificate. Furthermore, according to paragraphs 2 and 4 of the affidavit in support, the late Elizabeth Namiiro was a
20 biological sister to the 1st plaintiff or the applicant and she was a religious nun and as such is not survived by any children or spouse as a result of the nature of her religious vocation.

In addition, it was the applicant’s evidence that she jointly purchased the suit land with the late 2nd plaintiff and they utilized the same jointly until the 2nd respondent
25 allegedly started to trespass the same hence the filing of the head suit. According to annexure “B” of the affidavit in reply which contains the plaint in Civil Suit No. 906 of 2021, the two plaintiffs (Paskazia Katende and Elizabeth Namiiro) filed the suit as joint plaintiffs.

In the case of **John Kaye versus Attorney General Constitutional Court**
30 **Application No. 25 of 2012**, the Constitutional Court held *inter alia*, that, “... *It is settled law hat where certain facts are sworn to in the affidavit, the burden to deny*

5 *them is on the other party and that in case of failure to do so, they are presumed to have been accepted.*”

In the current application, the 1st respondent who swore an affidavit in reply did not indicate that the two plaintiffs in Civil Suit No. 906 of 2021 did not sue as joint plaintiffs. According to the case of ***Tarema Justus v. Kiteteyi Robina & 2 others***
10 ***HCCR No. 1 of 2017***, Hon. Justice Dr. Zeija F, held that Order 24 rule 2 is very clear and the moment it comes to the attention of court that one of the defendants or plaintiffs is dead, the court is supposed to record and substitute the name of the applicant if indeed the cause of action is still continuing or surviving. Therefore, I find merit in this application since the cause of action continues to survive despite
15 the demise of the 2nd plaintiff and there is no evidence to the contrary.

Regarding the non-signed application by the registrar, it should be noted that this application was endorsed by Court on 1st February 2024 and that is the same day when the advocates present were tasked to file affidavits in reply and submissions.

In respect of the interlocutory judgment in the case filed in 2020 and the ruling in
20 abatement, I will not delve in matters regarding the civil suit of 2020 since Civil Suit No. 203 of 2020 was not pending before me. In addition, according to ECCMIS, Civil Suit No. 203 of 2020 abated on 30th May 2023 and before that the plaintiffs’ advocates had written to court on 9th March 2023 withdrawing Civil Suit No. 203 of 2020. The letter seeking withdrawal was filed in ECCMIS on 16th March 2023. It is
25 Civil Suit No. 906 of 2021 which is pending before me.

Therefore, I find merit in this application and order as follows;

1. The application is granted and an entry shall be entered on the court record that the 2nd plaintiff Elizabeth Namiro died on the 1st day of June 2023 at 3:00pm at St. Francis Hospital Nsambya.

- 5 2. The cause of action in H.C.C.S No. 906 of 2021 continues and survives to the
 applicant as the sole plaintiff.
3. The plaint in H.C.C.S 906 of 2021 be amended to remove the name of 2nd
 plaintiff not later than 7th March 2024 and the defendants file amended
 defenses by 3rd April 2024
- 10 4. The main suit (Civil Suit No. 906 of 2021) shall mentioned on 29th April 2024
 at 10.00am for further directions.
5. Costs shall be in the cause.

I so order.

Ruling delivered at High Court, Land Division via ECCMIS this **26th day of**
15 **February, 2024.**

Immaculate Busingye Byaruhanga

Judge

20 **26-02-2024**