

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**CIVIL SUIT NO. 263 OF 2005**

1. **FRED NYEENYA MAYAMBALA**
2. **SAMUEL KISITU**
3. **SEMALI NALUTAALI.....PLAINTIFFS**

**VERSUS**

**BISASO NATHAN.....DEFENDANT**

**BEFORE HON. LADY JUSTICE PERCY NIGHT TUHAISE**

**RULING**

This is a ruling on a preliminary objection raised by learned Counsel Wamukota Charles for the Plaintiff to the effect that learned Counsel Fredrick Ssempebwa for the Defendant is not supposed to appear in this matter because of conflict of interest. Counsel Wamukota submitted that the suit property initially formed part of the estate of the late Samuel Mayambala before being transferred into the Defendant's names, and that Counsel Ssempebwa for the Defendants has ever acted for the estate of the late Samuel Mayambala. Counsel Wamukota referred to a letter dated 23<sup>rd</sup> May 2007 the Defendant's Counsel wrote to the Legal Officer of NPART stating that they act for the estate of late Samuel Mayambala. He contended that the Plaintiffs in this case are beneficiaries to the estate of the late Samuel Mayambala seeking recovery of land belonging to the same estate which Counsel for the Defendant is representing. He argued that Counsel for the Defendant cannot appear in the same matter.

The objection was opposed by learned Counsel Fredrick Ssempebwa who argued that it is wholly misconceived. Counsel Ssempebwa contended that even if it was to be assumed that he acted in one instance of writing a letter for the estate of Samuel Mayambala, it does not follow that he could not represent the Defendant in this case. He gave two reasons for his contention. First, he argued that the estate is not a party to this suit. He maintained that the Plaintiffs are suing as beneficiaries, and that they are suing Nathan Bisaso, not the estate of Samuel Mayambala. He argued that no conflict of interest can arise in such a situation. Secondly, he stated that the Plaintiffs in their pleadings deny that anybody has ever applied for letters of administration of the estate of Samuel Mayambala. He referred to paragraph 6 of the plaint which alleged that some people applied for administration of the estate of Samuel Takirambude who is not Samuel Mayambala. He also referred to paragraph 7(iv) of the plaint which he said clearly alleged, as part of particulars of fraud, that no letters of administration or probate had been taken out by anybody for the estate of late Samwiri Mayambala. He contended that this is the gist of the Plaintiff's case and they had not changed their position on this matter. He argued that it would be improper to raise an objection based on a fact they deny. He submitted that the objection

was frivolous and intended to delay justice. He prayed court to reject the objection with costs to the Defendants and order that hearing of the case proceeds.

Counsel for the Plaintiffs in rejoinder argued that the suit before court is for recovery of property belonging to the estate of Samuel Mayambala namely Block 9 Plot 201, which is the suit property the Defendant's Counsel at one time represented.

I have carefully perused the court record and addressed the submissions of both Counsel, including the relevant authorities on this matter.

The question of whether there are letters of administration in respect of the estate of the late Samwiri Mayambala is an agreed issue to be resolved after hearing the case on the merits. I will therefore refrain from addressing it. Suffice it to say that the question for determination in this objection is whether Counsel who had earlier acted for the estate of Samuel Mayambala deceased, can subsequently be Counsel in a matter regarding the same estate without having a conflict of interest.

The Advocates (Professional Conduct) Regulations, SI 267 – 2, in rule 4, provides as follows:-

*“ An Advocate shall not accept instructions from any person in respect of a contentious or non contentious matter if the matter involves a former client and the Advocate as a result of acting for the former client is aware of any facts which may be prejudicial to the client in that matter.”*

There is a copy of a letter on the court record, dated 23<sup>rd</sup> May 2007 and reference numbered KS/CV/05/4238. It was written by Messers Katende, Ssempebwa & Co Advocates and addressed to the Legal Officer of NPART, William Street Kampala, stating, among other things, that they acted for the estate of Samuel Mayambala deceased. I believe this is the letter referred to by learned Counsel for the Plaintiffs in the objection he raised. The said letter, as per its letter head, indicates that Mr. Fredrick Ssempebwa, whose representation of the Defendant is objected to by the Plaintiffs' Counsel, is a senior partner in the said firm. The pleadings and the scheduling notes signed by both Counsel indicate that the suit property is Kibuga Block 9 Plot 201 land at Kagugube. The Plaintiff's allegation is that the Defendant fraudulently registered the suit property in his names. The Defendant denies this, contending that registration of the suit property in his names was by consent of the beneficiaries of the estate under which the suit property falls, as consideration for redeeming the said property after it had been fraudulently mortgaged by unauthorised people. The conflict of interest the Plaintiffs' Counsel attributes to Counsel Ssempebwa is that the said Counsel had earlier represented the estate under which the suit property sought to be recovered by the Plaintiff against the Defendant falls.

The first reason for opposing the objection is that the estate is not a party to this suit in that the Plaintiffs are suing as beneficiaries, and that they are suing Nathan Bisaso, not the estate of Samuel Mayambala. Counsel Ssempebwa argued that no conflict of interest can arise in such a

situation. It is apparent on the face of the plaint, especially paragraphs 1, 2, and 3, that the Plaintiffs are suing as beneficiaries of an estate. They are not suing as administrators of the said estate. In fact, as stated above, the question of whether there are administrators to the said estate is an issue to be determined in the main suit as it is denied by the Plaintiffs. If Counsel Ssempebwa had earlier represented the Plaintiffs, or if the estate of Samuel Mayambala earlier represented by the same Counsel was suing the Defendant, there would have clearly been a conflict of interest. Such a situation would place Counsel Ssempebwa in a peculiar position such that it would pose a danger of him being privy to information that may be prejudicial to the Plaintiff's or to the said estate's case as their former Counsel. See **Woollen Mills Ltd & Anor V Kaplan & Straton A dvocates [1990] 1 EA 244; Larb(U) Ltd & 2 Ors V Greenland Bank in Liquidation V Sil Investments Ltd Misc. Applic No. 421 of 2010** (Unreported, Madrama J).

In the instant case, Counsel Ssempebwa has never been Counsel to the Plaintiffs, neither is the estate of Samuel Mayambala earlier represented by Counsel Ssempebwa a party to this suit, such that being Counsel for the Defendants in this matter would pose a conflict of interest for him. It just happens that he will continue to represent a party regarding a dispute on an estate he had earlier acted for. I would therefore agree with learned Counsel for the Defendant that no conflict of interest arises by virtue of him representing the Defendant in this case.

I may also need to comment on the second reason raised by Learned Counsel Ssempebwa for opposing the instant objection. Counsel alluded to specific aspects of the pleadings to contend that that it would be improper to raise an objection based on a fact the Plaintiffs deny in their pleadings. The Plaintiffs in paragraph 6 of their plaint allege that some people applied for administration of the estate of Samuel Takirambude who is not Samuel Mayambala. In paragraph 7(iv) of the same plaint they also allege, as part of particulars of fraud, that no letters of administration or probate had been taken out by anybody for the estate of late Samwiri Mayambala. This in fact is an agreed issue as per the scheduling memo signed by both Counsel. It was Counsel Ssempebwa's contention that this is the gist of the Plaintiff's case and they had not changed their position on this matter. He accordingly argued that it would be improper to raise an objection based on a fact they deny.

In my opinion, with respect to Counsel Ssempebwa, the fact denied by Counsel for the Plaintiffs in the pleadings is that there are letters of administration to the estate of the late Samuel Mayambala, not that the estate does not exist. These are two different things. An estate can exist even when no one has been granted probate or letters of administration in respect of the same. Most succession laws in this country do not define what an estate is, in relation to dead people. However, the Administration of Estates of Persons of Sound Mind, Cap 155, defines estate to include "*...all the movable or immovable property of any person*". In **Black's Law Dictionary, seventh edition, page 567**, estate, in as far as it relates to dead people, is defined as "*the property that one leaves after death; the collective assets and liabilities of a dead person.*" The **Advanced Learners Dictionary, 6<sup>th</sup> Edition, page 394**, defines it as "*all the money and property that a person owns, especially everything that is left when they die.*" Within the given

perspective therefore, it would be in order for the Plaintiffs' Counsel to raise the objection since he was not denying the existence of the estate of Smuel Mayambala, but rather, the fact that there are letters of administration in respect of the said estate.

I would in the premises, and for reasons given above, overrule this objection with costs to the Defendant.

**Dated at Kampala this 25<sup>th</sup> day of October 2011.**

Percy Night Tuhaise

**JUDGE.**