

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT ARUA
MISCELLANEOUS CIVIL APPLICATION No. 0039 OF 2016
(Arising from Arua High Court Civil Suit No. 0031 OF 2013)

OKWAY JOHN KIMBO **APPLICANT**
(Legal Representative of Anna Ayeyotho)

VERSUS

1. ODDIA NURU }
2. JAMADA ODDIA } **RESPONDENTS**

Before: Hon Justice Stephen Mubiru.

RULING

This is an application by Notice of Motion (ex-parte) under section 98 of *The Civil Procedure Act*, and Order 24 rules 4 (1) and (2) and 12, and Order 6 rule 19 of *The Civil Procedure Rules*, for orders that the applicant be substituted as defendant in the place of the 5th Defendant, Anna Ayeyotho, who died on 29th March 2015, before disposal of the suit and that the necessary amendments be made to the written statement of defence as a result of that substitution. The application is supported by the affidavit of the applicant who deposes that he is one of the beneficiaries of the estate of the deceased. That a family meeting was convened at which he together with two other people were selected to obtain letters of administration of the estate of the deceased, a process they have begun. He seeks to be appointed as a legal representative for the estate of the deceased, limited to her interests in the suit, until its final disposal. Once so appointed, it will necessitate an amendment of the written statement of defence hence the leave sought for that purpose.

Upon the demise of a litigant before the final determination of the suit by or against him or her, where the cause of action survives the litigant, section 222 of *The Succession Act* permits the grant of letters of administration limited to the suit. It provides as follows;

When it is necessary that the representative of a person deceased is made a party to a pending suit, and the executor or person entitled to administration is unable or unwilling to act, letters of administration may be granted to the nominee of a party in the suit, limited for the purpose of representing the deceased in that suit or in any other cause or suit which may be commenced in the same or in any other court between the parties, or any other parties, touching the matters at issue in that cause or suit, and until a final decree shall be made in it, and carried into complete execution.

A grant of this nature is made where owing to the special circumstances of the case, the urgency of the matter as appears from the affidavit is so great that it would not be possible for the court to make a full grant in sufficient time to meet the necessities of the estate of the deceased. It is in the nature of a grant of administration *ad litem*, limited for the purpose of filing or prosecuting a suit or defending a suit, with no powers to the grantee to distribute the estate under the grant. Such a grant is permitted to be issued without prior advertisement. All other grants must be advertised and cannot be made until there has been published notice of the application for the grant inviting objections thereto to be made known to the court within a specified period of not less than fourteen days from the date of publication and the period so specified has expired.

In *Hadija v. Iddi* [1974] EA 50, the defendant was appointed the personal representative of a deceased driver against whom a claim was to be made. The plaintiff filed a suit seeking for the letters of administration to be set aside arguing that letters can only be issued when there is a pending suit. It was held by the high court of Kenya, in interpreting section 222 of the *Indian Succession Act*, which is identical to 222 of *The Succession Act*, that the appointment of a personal representative may be made under that section even when there was no suit pending. (The case of *Gibbs v. Roy* 85 CLJ 280 was considered). This authority most certainly noted that in order to apply for a grant limited to filing a suit, the section is applicable. I have no doubt that it applies equally to situations where there is a subsisting or pending suit.

I have considered the merits of this application. I am satisfied that there is now pending in this honourable court a suit against the deceased, Anna Ayeyotho, being Arua High Court Civil Suit No. 0031 of 2013. The applicant has presented the application in his capacity as a beneficiary of the estate of the deceased and is therefore a person interested in the outcome of the deceased. I am satisfied that the cause of action in the suit survived the death of the said Anna Ayeyotho. The applicant has attached to his application a certificate of death indicating that she died of hypertension with stroke at the Arua Regional Referral Hospital on 29th March 2015. I have not found any conflict of interest between him and the deceased as regards the subject matter of the suit and the issues to be determined therein. The orders sought are for grant of administration *ad litem* limited for the purpose of defending the suit which is still pending before this court, without powers of the applicant to distribute the estate. The process leading to issuance of letters of administration for the estate of the deceased has commenced but is unlikely to have been concluded by the next date fixed for the hearing of the suit. In the circumstances, the urgency of the matter as appears from the affidavit is so great that it would not be possible for the court to make a full grant in sufficient time to meet the necessities of the estate of the deceased.

For the above stated reasons, the court considers that the circumstances of this case call for, as part of the preservation of the deceased's interest in the pending suit, letters of administration *ad litem*, to be granted. Let it be known therefore that letters of administration *ad litem* of all the estate of the above-named Anna Ayeyotho, who died on the 29th of March 2015 domiciled in Uganda, which devolves to and vests in his Personal Representative but limited to the purposes only for purposes of defending Arua High Court Civil Suit No. 0031 of 2013, and until further representation, are hereby granted by this Court to the applicant, Mr. Okway John Kimbo, he having undertaken to administer the estate of the deceased according to law (limited as aforesaid) and until further representation be granted and to render a true and just account thereof whenever required by law to do.

Under Order 24 r 1 of *The Civil Procedure Rules*, death of a defendant does not cause the suit to abate if the cause of action survives or continues. The deceased Anna Ayeyotho was named as the fifth defendant in a suit relating to real property. In such circumstances, Order 24 rule 4 (1) empowers the court, on an application made for that purpose, to cause the legal representative of

the deceased defendant to be made a party and thereafter to proceed with the suit. Final determination of the suit requires the legal representative of Anna Ayeyotho to be made a party to the suit in her place. For that reason leave is hereby granted to substitute the name of Anna Ayeyotho as the 5th defendant to the suit, with that of her legal representative Mr. Okway John Kimbo.

Following the substitution mentioned above, it will be necessary to make consequential amendments to the written statement of defence to reflect the true character in which the legal representative of the deceased, Mr. Okway John Kimbo, will defend the suit henceforth and for other attendant or ancillary averments appropriate to his character as legal representative of the deceased defendant. For that purpose leave is granted to the applicant under the provisions of Order 6 rule 19 of *The Civil Procedure Rules* to make the necessary amendments. All this should be done within fourteen days from the date of this order.

In the final result, for the foregoing reasons, the application is allowed with no order as to costs.

Dated at Arua this 1st day of December 2016.

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Stephen Mubiru,
Judge