



& Co. Advocates while the 3<sup>rd</sup> Defendant was represented by **Mr. John Burungu** from M/s ABNO Advocates.

[3] The preliminary objection raised was to the effect that the plaint contravenes Order 32 rules 1 and 2 of the Civil Procedure Rules.

### **Submissions by Counsel for the 3<sup>rd</sup> Defendant**

[4] Counsel for the 3<sup>rd</sup> Defendant submitted that the plaint in the instant suit was instituted without a letter of authority from the next friends as required under the provisions of Order 32 rules 1 and 2 of the CPR in a case where a suit by a minor is instituted through a next friend. Counsel relied on *Kampala City Council and Ors v Nantume Shamirah, Consolidated Civil Appeals No. 43 & 47 of 2009* to the effect that the rationale of Order 32 is to put in place mechanisms that safe guard a party from liability that they may not be able to meet such as costs of the suit and that failure to institute a suit by a minor through a next friend is penalized by taking the plaint off the file. Counsel submitted that the Plaintiffs herein did not attach a letter of authority from the next friends which must be presented together with the plaint and prayed that this court dismisses the suit for want of authority with costs.

### **Submissions by Counsel for the Plaintiffs**

[5] In reply, Counsel for the Plaintiffs submitted that the Plaintiffs presented letters written by the LC1 Chairperson, Ayago Village, Petta sub county, Tororo District addressed to the 3<sup>rd</sup> Defendant under which they had been chosen to represent the family of the late Onyango Courageous. Counsel argued that the rationale of the letter required under Order 32 rule 2 of the CPR is to safeguard a party from liability that they may meet and argued that the next friends in the instant case are aware of the duties and obligations in their capacity. Counsel further argued that the case of *Kampala City Council and Ors v Nantume Shamirah (supra)* that was relied on by the Defendant's Counsel is distinguishable on account that no next of friend was indicated as opposed to

the instant case where the next friends Nyachwo Leah and Agoso Patrick are indicated in compliance with Order 32 rule 1 of the CPR.

### **Determination by the Court**

[6] Order 32 rule 1 of the CPR provides as follows –

#### ***“Minor to sue by next friend***

*(1) Every suit by a minor shall be instituted in his or her name by a person who in the suit shall be called the next friend of the minor.*

*(2) Before the name of any person shall be used in any action as next friend of any infant where the suit is instituted by an advocate, that person shall sign a written authority to the advocate for that purpose, and the authority shall be presented together with the plaint and shall be filed on record.”*

[7] In the case of *Kampala City Council & 2 Others v Nantume Shamirah* (Civil Appeals No. 43 & 47 of 2009) [2020] UGCA 2072 (17 July 2020), the Court of Appeal found that failure to institute a suit through a next friend is penalized by taking off the plaint since the requirement is not a mere technicality that is curable under Article 126(2)(e) of the Constitution. It is, however, noteworthy that the facts and circumstances of the above cited case are clearly distinguishable from those of the present case. In the above cited case, the suit was not filed through a next friend but by the minor herself, being a 17-year-old. The Court was, therefore, dealing with a total breach of the requirement under Order 32 rules 1 and 2 of the CPR.

[8] In the present case, the suit was instituted in the name of the minors but through two adult persons named as next friends. What was omitted was the attachment onto the plaint of a letter signed by the next friends. There is, however, evidence that the two named persons had been chosen to represent the family of the deceased father of the minors and they had undertaken the responsibility. A letter to that effect, although not filed with the plaint, appears

as one of the documents in the Plaintiffs' trial bundle. According to Counsel for the Plaintiffs, the named next friends were aware of their duties and obligations in that capacity.

[9] According to the position of the law set out by the Court of Appeal in *Kampala City Council & 2 Others v Nantume Shamirah (supra)*, the purpose of the written authority of a next friend is to protect children from instituting suits without capacity and to shield them from being directly sued due to orders that may arise from the suit which they may not be able to comply with, on the one hand; and to protect persons who may be sued by a child and become successful in the suit yet the child may not be able to comply with the orders especially for costs, on the other hand. In this case, the suit was not brought by the minors; it was brought by persons clearly named as next friends. The letter referred to by the Applicant's Counsel is dated 14<sup>th</sup> November 2021 and thus predates the filing of the suit; meaning that by the time the plaint was filed, the two named next friends knew and had accepted the commitment. In such circumstances, the contention that the suit was instituted without written authority of the next friends under rule 1 of Order 32 CPR only remains a matter of form and thus a mere technicality that is curable under Article 126(2)(e) of the Constitution.

[10] It ought to be noted that under Order 32 rule 1(2) of the CPR, the form of the written authority is not stipulated. As such, whatever form the authority takes would suffice. What matters is that the next friends gave authority for the inclusion of their names on the plaint as representatives of the minors. The document herein satisfies that quality and purpose as envisaged under Order 32 rule 1 of the CPR.

[11] Based on the foregoing, the preliminary objection raised by Counsel for the 3<sup>rd</sup> Defendant is devoid of merit and is overruled. The suit shall be heard and

determined on its merits. The costs of this proceeding shall abide the outcome of the suit.

It is so ordered.

***Dated, signed and delivered by email this 12<sup>th</sup> day of April, 2024.***

A handwritten signature in blue ink, appearing to read 'Boniface Wamala', with a long horizontal flourish extending to the right.

**Boniface Wamala**  
**JUDGE**