THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA

HOLDEN

AT KAMPALA

(LAND DIVISION)

MISC. APPLICATION NO 976 OF 2012

(ARISING FROM LAND CLAIM NO.210 OF 2009)

1. BALIKUDDEMBE JUMBA PETER
2. NAKIGUDDE SPECIOZA :::::::::::::: APPLICANTS
3. ANTHONY KYOTALYA KIGGUNDU

VERSUS

JJAGWE MBUGA :::::::::::::: RESPONDENT

AND

GERTRUDE NAMBOOZE :::::::::::::: DECEASED

RULING BY HON. JUSTICE JOSEPH MURANGIRA

1. Introduction

1.1. The applicants through their lawyers M/s Mbogo & Co. Advocates brought this application under **Section 222 of the Succession Act** and **Order 24 rule 4 and 12 of the Civil Procedure Rules S.I. 71-1**. It is brought by notice of motion. This application is supported by the affidavit sworn by the 1st applicant, Balikuddembe Jumba Peter.

This application is seeking the following orders:-

(a) The respondent be granted letters of administration to the estate of the late Gertrude Nambooze for purposes of the main suit.

(b) The respondent thereafter be made a party to the suit as a legal representative of the deceased.

(c) The plaint be amended accordingly.

(d) Costs of this application be in the cause.

1.2 The respondent, Jjagwe Mbuga through his lawyers Mukiibi, Sentamu & Co. Advocates filed an affidavit in rebuttal to this application, sworn on 11th March, 2013. The respondent vehemently opposed this application. For emphasis and educating all the parties to this application, I hereby reproduce the respondent's averments in his affidavit in reply as shown herebelow:-

" **AFFIDAVIT IN REBUTTAL**

I ,**Jjagwe Mbuga** of …….

……...

1. **That ……**
2. **That I have been obliged to make the rebuttal because of the unending replies and rejoinders of the applicants which introduce new mattes all the time.**
3. **That I deny all the paragraphs in the said affidavit in rejoinder save for the fact that I am the respondent. Therefore paragraphs 3 up to 8 are not admitted.**
4. **That 1st and foremost, the deceased Joseph Mary Kiggundu has never been the registered owner of my land Block 26 plot 881 at Bulange which I am owner and in occupation and therefore as stated under the beneficiaries have no claim thereto and hence no status quo to preserve.**
5. **That they are only exhibiting bad faith, ill will, malice in attempting to deny and grab my land, (a copy of the title deed is annexed hereto as "A").**
6. **Therefore paragraph 4, 5, 6 are not admitted, save for the fact that the applicants are administrators of the estate of the Joseph Mary Kiggundu.**

7. **That to exhibit their malice, ill intention and bad faith, the applicants picked me from the Court premises on the 14/2/2013 had me arrested on trumped charges of malicious damage at Old Kampala Police Station.**
8. **That I was born and have been staying and occupying the disputed land and therefore there is absolutely no reason for me to destroy any buildings or developments thereon.**
9. **Besides the foregone, the land and all developments thereon belong to me and I can use and abuse my property as I wish as the loss is suffered by myself and no one else including the applicants. I have in this respect therefore been informed by C. Mukiibi, Sentamu & Co. Advocates representing me and believe so, that the applicants cannot suffer any loss when I am damaging my own property.**
10. **Therefore considering the foregone above, I don't admit the contents of paragraph 5 that I started developing on my own land during pendency of the suit and besides a development on land is quantified in money terms and damages can be given to atone the injury.**
11. **Besides the paragraphs 9 and 10 foregone above, a development on a suit land is not a loss to the applicants. It merely adds value to the land so that in any case Court finds the case in their favour, they have added value on the land. I have therefore been informed by C. Mukiibi, Sentamu & Co. Advocates and verily believe that Courts do not grant injunctions to restrain developments on land since applicants are not actually suffering any loss but are getting value therefrom the development.**
12. **Paragraphs 6 and 7 are admitted in so far as neither party has an interest in the other's estates and the fact of fraud is denied and it cannot be a ground to grant an injunction as it must be specifically proved in the main case. CS No. 210 of 2009.**
13. **That the applicants have not shown by their affidavits a prima face case with any chance of success nor have they shown that they shall suffer irrespirable injury which cannot be atoned by an award of damages as the late Joseph Mary Kiggundu had no interest in Block 26 Plot 881 which is my land.**
14. **Moreover since I am the sole registered owner, who has the absolute rights to use my property, the balance of convenience favours not**

granting the order for a temporary injunction as it would be a direct affront on my proprietary rights.

15. **That I have been informed by C. Mukiibi, Sentamu & Co. Advocates and I verily believe that the grant of a temporary injunction is discretionary and therefore it is only fair and just that Court declines to grant it as I will be the one to suffer irreparable damage by its grant and not the applicants herein.**
16. **That I make this affidavit in rebuttal to the one in rejoinder dated 1st March, 2013 and as supplementary to the one I swore in reply to the application for the temporary injunction, which application I pray it be dismissed with costs.**
17. **That whatever I have stated herein above is true and correct to the best of my knowledge and belief, save for what is from the sources therein disclosed and which I believe to be true.**

Sworn at Kampala by the said
JJagwe Mbuga **_____sgd_____**
At Kampala this 11th day of March 2013. **Deponent** **”**

2. Resolution of this application by Court

In this application, the respondent says that he cannot be a legal representative of late Gertrude Nambooze. The law does not compel any person to be a legal representative of a deceased person. Therefore, the respondent cannot be forced to be the legal representative of the late Gertrude Nambooze.

The respondent is objecting to being made an administrator of the estate of the late Gertrude Nambooze. Then what next? May be the applicants can revoke to Section 4 of the Administrator General's Act, Cap. 157, so that they move the Administrator General to apply for the Letters of Administration to the estate, if any, of the late Gertrude Nambooze. Otherwise the applicants' HCCS No. 2010 of 2009 will be greatly affected by Order 24 rule 4 (3) of the Civil Procedure Rules which provides; that:-

“ **Where within the time limited by law no application is made under sub-rule (1) of this rule, the suit shall abate as against the deceased defendant”**

Any person wishing to be a legal representative of a deceased person must apply for letters of Administration, first. Section 191 and 192 of the Succession Act, Cap. 162 provide that:

> **“ 191; Right to intestate’s property, when established**
> **Except as hereafter provided, but subject to Section 4 of the Administrator General’s Act, no right to any part of the property of a person who has died intestate shall be established in any Court of justice, unless letters of administration have first been granted by a Court of competent jurisdiction.”**
>
> **192. Effect of letters of administration**
> **Letters of administration entitle the administrator to all rights belonging to the intestate as effectually as if the administration has been granted at the moment after his or her death.”**

The applicants in this application want this Court to grant letters of administration to the respondent. The question that arises is that: **is the High Court of Uganda, Land Division a competent Court to grant the order requested for? The answer is “NO”.**

An application of this nature must be lodged in the High Court of Uganda, Family Division.

Consequent to the above, the application was brought before the wrong forum and it should not be entertained by this Court. According of **S.14(1) of the judicature Act, Cap. 13:-**

"the High Court shall subject to the Constitution, have unlimited

Jurisdiction in all matters"

However, for the sake of administration and expedience, the High Court has divisions before which specific matters are entertained. These include Civil, Land, Commercial and Family Divisions, the Anti-Corruption Court and International War Crimes Court. The nature of this application seeking legal representative for an estate should have been properly made before the Family Division of the High Court rather not the Land Division, because it is that Division which (without suggesting usurping /removing the powers of this court) is best placed to entertain such an application and that is the sole essence, purpose and wisdom of the Judiciary why these Divisions were created. They are not without a purpose.

The finding of the court of Appeal in that case of ***BEVAN VS HOULDWORTH (1948)1 ALL ER 273*** is very useful here. In that case, the plaintiff in a probate action propounded a will and sought probate of it, subject to the excision of benefits to certain beneficiaries. The estate consisted of securities, real estate and personal chattles' which had to be safe guarded by employment of a caretaker and either a receiver or an administrator pendente lite had to be appointed. The court noted that the former is appointed in Chancery Division of the Court whilst the administrator, the probate Division and Lord Greene was quick to notice that the practice in both Divisions of the Court differed. He noted that the probate Court existed only to grant administration pendent lite where necessity for the grant was made. But where a party wanted a receiver appointed; the Court of Chancery had jurisdiction. He refused the application. He further stated that the case called for appointing an administrator, that being the appropriate relief in the probate Division.

It is therefore the my considered view that even if the High Court has got unlimited jurisdiction its Land Division is not the proper forum before which to bring matters relating to administration of estates of deceased persons.

It would therefore not be appropriate for this Land Division of the High Court to make the order being sought by the applicants.

The application is also supported by the Affidavit in Rejoinder sworn by one Peter Balikuddembe. This affidavit in rejoinder was purportedly sworn before Mr. Chris. K Ndozireko as commissioner for oaths. It does not bear a date nor a place where it was sworn hence offending the provisions of S***.6 of the Oaths Act (CAP 19)*** which provides that

> ***"Every Commissioner for Oaths or Notary Public before whom any oath or affidavit is taken or made shall state truly in the jurat or attestation at what place and on what date it is taken or made."***

My above considerations are so vital and make the affidavit in rejoinder incurably defective. I take note of it. ***In the case of TEDDY NAMAZZI VS ANNE SIBO 1986 HCB 58-*** The Applicant sought by notice of motion to reinstate a suit that had been dismissed. The affidavit in support thereof did not state the date when it was taken. It was held that the affidavit did not comply with the statutory requirements of the Oaths Act (CAP 52) and hence it was defective rendering the application to be without an affidavit in support and therefore it could not be entertained.

3. Conclusion

In the premises and for the reasons given hereinabove, this application lacks merit. It is accordingly dismissed with costs to the respondent.

Dated at Kampala this 12th day of June, 2013.

sgd

Murangira Joseph

Judge